MEMORANDUM

TO: Illinois Commerce Commission

FROM: Phillip A. Casey
General Counsel

DATE: November 23, 2004

SUBJECT: OGC Comment and Analysis on Working Group Implementation Reports

Following the Commission's efforts in February 2004 to establish a process whereby stakeholders could come together to discuss the future of the state's electric market and identify public policy issues surrounding the deregulation of the electric industry in Illinois, the five persons appointed to convene working groups led numerous discussions, oversaw the presentation of many differing points of view, and prepared in-depth reports describing the substance of the groups' work.

Following the Commission's receipt of the working group reports, I took steps to convene what was in essence a sixth group, consisting of each of the five working group conveners, myself, and several other members of the Office of General Counsel. The goal of our group has been to identify means of implementing steps identified as appropriate by the working groups as Illinois approaches the end of the "mandatory transition period" created by Article XVI of the Public Utilities Act (often referred to as the Customer Choice Law). In order to crystallize the implementation recommendations of the various working groups, I asked the five conveners to prepare implementation reports setting forth assessments of each group as to steps that may need to be taken by the Commission (orders or rulemakings) or by the General Assembly (changes in the law). While the primary focus of OGC's efforts was to have been those recommendations that reflected a consensus of the various working group members, I also expressed an interest in matters of importance that enjoyed less than complete consensus.

The conveners made extraordinary efforts, including the preparation and circulation of draft reports, receipt of comments, the preparation of revised drafts, and the receipt of yet further comments from working group members. All of these efforts have led to a fuller understanding of the issues we face, and the views of various stakeholders. At the same time, these efforts have demonstrated that however valuable consensus might be, it is not a reasonable goal to expect with respect to many of the concerns that have been expressed throughout the workshop process.

What follows is the Implementation Working Group Report, consisting of an introduction in the format suggested for the other working groups, followed by the documents we received from the conveners, along with comments prepared by the Office of General Counsel that address issues raised and recommendations made.

We thank the members of the working groups and especially the conveners for all of their efforts in bringing these documents together. Collectively, they represent a body of information and analysis that will greatly assist those who must make the ultimate decisions concerning the future of the electricity market in the State of Illinois. We have undertaken to offer our thoughts in order to assist in the efforts that have gone before.

We look forward to discussing these matters with you.

Post 2006 Initiative
Implementation Working Group
Final Report

I. Executive Summary

The Implementation Working Group ("IWG") was assigned the task of examining the reports of the five working groups, Energy Assistance, Utility Service Obligations, Rates, Competitive Issues, and Procurement, to determine how consensus items and significant non- consensus issues could be implemented. The IWG was composed of the conveners of the five working groups and the Office of General Counsel.

The IWG participants recognized the limited time available to prepare a report and worked together cooperatively given those time constraints. Though many phone calls and e-mails were exchanged, the IWG participants met just once, on September 22, 2004, after all five substantive reports were completed. During that meeting, a process was developed to conduct the examination, and the participants in attendance agreed upon a schedule.

Generally speaking, IWG undertook the following process: Each working group convener prepared an initial implementation draft report of his or her respective working group. In most instances, the review considered the questions originally posed in Staff's White Paper, together with consensus items and significant issues on which consensus could not be reached. That initial draft was then made available to all participants of the respective working group for comment. Any comments received by the convener were then incorporated into a final draft report. The final draft implementation report of the five conveners was again circulated among the respective working group participants for final review and comment. To the extent time permitted, any final comments received were incorporated into each group's final implementation report, which was forwarded to the IWG convener. Upon receipt of each of the five implementation reports, the Office of General Counsel provided its comments to the proposed implementation methods. Please note that conveners and group participants have not had an opportunity to review or respond to the Office of General Counsel's comments.

Attached you will find the implementation reports of the five substantive working groups, together with comments from the Office of General Counsel. In most cases the Office of General Counsel concurs with the implementation method(s) suggested by the working groups. In certain instances the Office of General Counsel provides additional considerations or develops the suggested implementation method more fully.

II. Group Name

Implementation Working Group

III. Group Administration

A. Participants List
Convener:

Phillip A. Casey, General Counsel, Illinois Commerce Commission

Participants:

Utility Service Obligation Working Group
Katie Papadimitriu
Mark N. Pera, Cook County State's Attorney's Office

Rates Working Group
Glen Rippie

Energy Assistance Working Group
Jon Carls
Jim Monk

Procurement Working Group
David F. Vite

Competitive Issues Working Group
Phillip O'Connor

Office of General Counsel
Brian Allen
Richard Favoriti
Pat Foster

IV. Workshop Process

Description of the Group's approach

As stated above, the IWG undertook to examine and develop suggested implementation methods based upon the issues addressed in each of the five working group reports. To conserve time and to tap into the expertise the conveners had developed, each of the five conveners independently drafted an initial implementation report for their respective working group, and circulated it to the substantive working group's participants. The working group participants were invited to comment on the initial draft. Each of the conveners provided a final draft of the group's implementation report, which was then circulated among the respective group participants for final

comments. Upon receiving the implementation reports from the conveners, the Office of General Counsel provided its comments to the proposed implementation methods contained within the reports it received. These are compiled below as the “Report of Results.”

V. Report of Results

The implementation reports of the five working groups, along with OGC comment, are presented in the following order: Procurement, Rates, Competitive Issues, Utility Service Obligations, and Energy Assistance.

Procurement Working Group Implementation Report

Attachment: Additional comments by: Mr. Darryl Bradford

Attachment: Additional comments by: Mr. Pat Giordano

Post 2006
Procurement Working Group
Implementation Report

OGC Note: The Procurement Working Group's Implementation Report was a letter dated October 5, 2004, from David F. Vite, the Group's convener, to ICC General Counsel Phil Casey. What follows is the text of that letter, with commentary from the ICC's Office of General Counsel in red text. Following this document are two additional comments OGC received before the close of business on October 14, 2004.

The Procurement Working Group did not discuss in detail how any particular procurement model would or should be implemented. It was recognized that the details of implementation may vary depending on the particular proposal, and that every party was free to take appropriate action to implement consensus items or to resolve disputes before the appropriate body. It was also recognized that procurement models raise issues relating to the ICC's and Federal Energy Regulatory Commission's respective jurisdictions and that these issues can raise thorny legal questions.

OGC Comment: Without attempting to create an exhaustive catalogue of the legal questions to which Mr. Vite refers, it is clear that the majority of Illinois utilities (including Commonwealth Edison, Illinois Power, Central Illinois Public Service, Central Illinois Light Company, and Union Electric) have divested themselves of generation assets, but have affiliates who own substantial generation in the relevant geographic area. Any model for the procurement of electricity by such a utility must clear at least two hurdles: (1) FERC regulation, including the strictures governing wholesale electric transactions between sellers of electricity and affiliated wholesale purchasers, and (2) the provisions of the Public Utilities Act (PUA) relevant to the setting of rates after 2006 (including Article IX, and Section 16-111(i), with its directive that the Commission consider the extent to which the power and energy component of rates exceeds the market value determined pursuant to Section 16-112, (and its authority for the Commission to set rates for electric power and energy component at 110% of the market value). In addition, Section 7-101 of the Public Utilities Act governs contracts and arrangements between public utilities and their affiliated interests, although it allows the Commission to exempt, by rule, certain types of contracts, including those at prices or rates fixed pursuant to law and those arrived at by competitive bidding.[1]

The two most common methods of implementing procurement models were either initiating a regulatory proceeding or introducing legislation. It was agreed that any procurement model "should be capable of implementation prior to January 1, 2007." There was also consensus that any procurement model should "require an initial regulatory review to approve and an ongoing regulatory review to oversee and improve the procurement process."

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[1] As noted in the Rates Working Group's Final Report, "the Illinois Commerce Commission may retain jurisdiction to review rates including FERC-jurisdictional prices, as permitted by federal law, *e.g.*, under the "*Pike County"* doctrine. *(See Pike County Light & Power Co. v. Pennsylvania Public Utility Comm'n*, 465 A.2d 735 (Comm. Ct. of Pa. 1983))." RWG Final Report, pp. 16-17 (in discussion of Scenario 4).

OGC Comment: OGC does not disagree with this statement, assuming that it means: (1) that any procurement model must be consistent with Illinois law as it exists at the time of implementation, (2) that the implementing entities have received valid ICC orders conferring any approval that is required under the law, and (3) that any additional regulatory review, approval, oversight, or other Commission action contemplated by the model is within the statutory authority of the Commission.

It was largely agreed that whether or not legislation was needed to implement a procurement model, there would still need to be ongoing regulatory involvement and proceedings. In fact, the PWG agreed that they "should have the opportunity to review and comment on the procurement process and proposed actions." Thus, there was a strong desire for a significant regulatory role in the procurement process. The group did not reach consensus that any specific legislation was needed or desirable. It was recognized that whether legislation was needed is a legal question which will depend on specific policy decisions.

OGC Comment: OGC does not disagree with this statement, assuming that it means: (1) that any procurement model must be consistent with Illinois law as it exists at the time of implementation, (2) that the implementing entities have received valid ICC orders conferring any approval that is required under the law, and (3) that any additional regulatory review, approval, oversight, or other Commission action contemplated by the model is within the statutory authority of the Commission.

It was recognized that if the state was going to adopt integrated resource planning requirements or a Market Responsive Pricing Model that had requirements beyond existing law such as contained in scenarios six or eleven, new legislation, and rules would be required.

OGC Comment: Given that the same amendatory act that added the Customer Choice Law to the Public Utilities Act (P.A. 90-561) also repealed the Section of the PUA that required least-cost energy planning proceedings (Section 8-402), it is logical for the working group members to have assumed that reinstitution of integrated resource planning requirements would require a change in the statute. Similarly, if scenario 11 (Texas model, aka Market Responsive Pricing Model) contemplates that the utility is relieved of its Section 16-103 bundled service obligations, or if the “price to beat” is set sufficiently above market value to exceed 110%, then it appears to be inconsistent with current law, and it is logical to conclude that new legislation would be required to permit it.

There was an understanding that most, if not all models, could accommodate a renewable portfolio standard. While not a consensus item, it was widely viewed that additional State legislation would be needed to adopt such a standard.

OGC Comment: OGC understands a “renewable portfolio standard” to be an enforceable requirement that those procuring electricity for sale in the retail market must include some specific percentage of electric capacity or energy from one or more specific types of generation using renewable energy sources, as defined in the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997 (20 ILCS 687/6-3), or otherwise. OGC understands why it would be a widely held view that additional State legislation would be needed to adopt such a standard.

Similarly an extension of the rate freeze or re-regulation of electricity production (scenarios seven and ten) would require legislation.

OGC Comment: The rate freeze extension would require legislation. From a review of the July 26, 2004, document entitled “Scenario 10/Reregulation of Electricity Production,” it appears that this scenario entails, among other things, the elimination of the statutory framework for a competitive retail market in electricity, which would of course require changes in the law.

It was also widely viewed that utilities could move forward with other procurement models, such as a competitive procurement model or vertically integrated Utility Supply (scenarios one, two, three and nine), without new legislation. No discussion was held as to whether the ICC has the authority, absent legislation, to pre-approve and oversee implementation of a competitive procurement model."

OGC Comment: OGC is not aware of any reason that electric utilities could not use methods such as those set forth in Scenarios 1, 2, or 3 to purchase electricity without a change in the PUA, provided that retail rates are set in a manner consistent with Section 16-111(i). Similarly, to the degree electric utilities that still own and operate generation assets seek to recover generation-related expenses and capital costs in a traditional rate case, OGC is unaware of anything in the PUA that would preclude this. OGC notes that Scenario 9 (commonly referred to as Vertically Integrated Utility Supply) was presented as having some of the attributes of Scenario 6 (referred to in the Procurement Working Group Report as Market Assessment and Supply Procurement Review); caution is therefore offered that integrated resource planning has been identified as potentially requiring legislation (see the discussion of scenario 6 above).

OGC Note: The Procurement Working Group's Implementation Report was a letter dated October 5, 2004, from David F. Vite, the Group's convener, to ICC General Counsel Phil Casey. What follows is an additional comment Mr. Vite forwarded to Mr. Casey on October 13, 2004, by an e-mail message from Darryl Bradford which included the following: "This is not a consensus item and should be viewed as an opinion of Commonwealth Edison which was not discussed in PWG meetings."

The ICC Has Authority Under Existing Law To Approve A Tariff That Passes-Through To Customers The Costs Incurred By A Utility To Procure Electricity Through A Competitive Procurement Process

With the need to establish new electric rates for bundled customers at the expiration of the rate freeze period in Illinois, electric utilities may propose to the Commission tariffs that would specify the charges relating to the "production" function. One option is for the utilities to spell out a specific competitive procurement process to procure the required electricity and to define a formula for passing through and assigning to commodity customers (and the applicable rate classes and rate elements) the costs incurred to provide that electricity. The Illinois Commerce Commission ("ICC") has authority under existing law to approve such tariffs.

The Commission's authority is grounded on a variety of provisions in the Public Utilities Act ("the Act"), including Section 9-101, 220 ILCS 5/9-101, which mandates "just and reasonable" rates or other charges for tariffed services, and Section 3-116 of the Act, 220 ILCS 5/3-116, which defines "rate" to include "every individual or joint rate, fare, toll, charge, rental or other compensation of any public utility . . . or any schedule or tariff thereof, and any rule, regulation, charge, practice or contract relating thereto." Under these provisions, the Commission may conclude that supply acquisition costs incurred through a competitive procurement process, embodied in a Commission-reviewed tariff, are just and reasonable and may be passed through to customers. Relevant authority to approve such a tariff is also available under other sections of the Act, including in both Articles IX and XVI.

OGC Comment: Certainly there are provisions in Articles IX and XVI that can be interpreted as permitting the adoption of tariffs that stop short of expressing charges on the basis of cents or dollars per unit of commodity or service. Also, any tariff that would express electricity charges in terms of the unknown outcome of a competitive procurement process would, as a prerequisite to enforceability, have to have been determined by the Commission to be consistent with the provisions of Article XVI. Section 16-111(i), which applies to post-2006 tariffed rates, requires the Commission to consider the extent to which the power and energy component of rates exceeds the market value determined pursuant to Section 16-112, (and authorizes the Commission to set rates for electric power and energy component at 110% of the market value). Provisions exist in these articles that tend to support the case for a competitive procurement process. OGC acknowledges however that this specific type of tariff has not been presented to the Commission previously.

There is ample precedent for rates and tariffs to specify formulas that rely on objective data, including wholesale market prices, to derive the specific dollar charges called for by the rate. For example, in just ComEd's case:

- ComEd's real time pricing rates (which were first effective prior even to restructuring) based rates and charges on wholesale market data. ComEd's current RTP rates continue to rely on market data to set prices.

OGC Comment: Real-time pricing, by its very nature, involves rates that are set as little as one day ahead, and that change over the course of a day. This does not mean that the point (including the fact that ComEd and other utilities implemented day-ahead real time pricing tariffs in advance of the statutory mandate in Section 16-107) is not well taken, only that there are characteristics of RTP that can be distinguished from auction-driven bundled rates.

- ComEd's Rate PR bases charges, in part, on "the lowest reasonably available cost to the electric utility of acquiring electric power and energy on the wholesale electric market to serve such remaining portion of the customer's electric power and energy requirement …." ILL. C.C. 1st Rev. Sheet No. 140.

OGC Comment: The "Purpose" section of Rate PR relies directly upon the PUA Section 16-104(f) requirement that partial requirements bundled service be provided at "the lowest reasonably available cost to the Company of acquiring the electric power and energy on the wholesale electric market to serve such portion left on bundled service, reasonable compensation for arranging for and providing such portion, and the Company's other costs of providing services for such portion." ILL. C. C. 1st Rev. Sheet No. 140. Once again, there are characteristics of the tariffed service referenced here that are different from yearly bundled rates.

- ComEd's Rider PPO, similarly, uses formulas to modify generally available market information and to derive charges applicable to customer classes, without stating the numerical results or the dollar charges in the rates.

OGC Comment: The Rider PPO formula is driven by the Section 16-110 statutory requirement that power and energy under the power purchase option be priced in a manner derived from the market value of electric power and energy, which in turn is set under tariffs ComEd proposed and the Commission approved under PUA Section 16-112.

- ComEd's Rate IPP and ISS contain provisions specifying how ComEd will calculate charges resulting in revenue-neutrality without stating the specific charges.

OGC Comment: Rate IPP, the rate charged to certain independent power producers, does not in fact state a specific charge, although it essentially incorporates by reference other provisions of tariffs and statutes which will be used to calculate the charges, including Rate RCDS, Rider ISS or Rider TS, Rate HEP, and the transition charge set forth in PUA Section 16-102, with certain specified adjustments. On the other hand, the rate also includes, without further definition, "charges for any other costs the Company incurs in providing service hereunder." ILL. C. C. No. 4, Original Sheet No. 55.78. Rider ISS establishes in excess of six pages of formulae, referring to other tariffs, which drive the calculation of charges. See the sheets following ILL. C. C. No. 4, 3rd Rev. Sheet No. 152.

Illinois Court decisions likewise support the use of a formula to set charges to customers. *See* City of Chicago v. Illinois Commerce Comm'n, 13 Ill.2d 607, 150 NE.2d 776 (1958). As in City of Chicago, the formula will be included in the utility tariffs describing the competitive procurement process. The ultimate unbundled commodity rates derived from the process will be based on inputs that are known and publicly available, having been determined through the process specified in the tariff. Any additional conversion or allocation of those results to spread procurement costs among bundled customer classes would be approved in rate case proceedings conducted in accordance with the Act.

OGC Comment: The City of Chicago opinion is premised in part on the fact that the Peoples Gas tariff in question recovered the wholesale price of gas as set by the Federal Power Commission. See 13 Ill. 2d at 615.

In light of this authority, the competitive procurement models in scenarios one and two studied by the Procurement Working Group could be implemented through a tariff filing voluntarily made by an interested utility. The proposed tariff could address the key features of the procurement process, enabling the ICC to determine that, if the process is followed, with appropriate regulatory oversight, the resulting costs will be just and reasonable. All interested stakeholders would have an opportunity to comment on the tariff in a docketed proceeding, to conduct discovery and to participate in a hearing concerning the proposed process. After the hearing, the Commission could approve the tariff with any modifications that it concluded were appropriate. Any such proceeding would need to respect the Federal Energy Regulatory Commission's jurisdiction over wholesale markets.

OGC Comment: OGC does not believe that the suggested procurement-driven tariffing process is outside the authority of the Commission, provided that in any proceeding considering such a process, these and other precedents be considered, as well as the Section 16-111(i) requirements for establishing bundled rates after the mandatory transition period as defined in Section 16-102. This would include the Section 16-111(i) requirement that the Commission "consider the extent to which the electric utility's tariffed rates for [the electric power and energy] component for each customer class exceed the market value determined pursuant to Section 16-112 . . .". 220 ILCS 5/16-111(i).

As to the timing of such a filing, it would need to be done sufficiently in advance of January 1, 2007 to afford the Commission time to complete its 11 month proceeding and to conduct a competitive procurement process. The competitive procurement process is expected to take a minimum of six months after issuance of the Commission order.

OGC Comment: Eleven months is the standard length for a Section 9-201 proceeding; OGC notes that there are other provisions of articles IX and XVI of the Public Utilities Act under which rates can be considered.

Provided by Darryl Bradford

Commonwealth Edison

This is not a consensus item of the Procurement Working Group

OGC Note*:* The Procurement Working Group's Implementation Report was a letter dated October 5, 2004, from David F. Vite, the Group's convener, to ICC General Counsel Phil Casey. What follows are additional comments Mr. Vite forwarded to Mr. Casey on October 14, 2004, by an e-mail message from Pat Giordano on behalf of BOMA, Trizec Properties, Inc., and Shorenstein Realty Services, L.P., which included the following: "This is not a consensus item nor is it an item which was discussed within the PWG."

RESPONSE OF BOMA, TRIZEC AND SHORENSTEIN TO COMED'S MEMORANDUM ENTITLED "THE ICC HAS AUTHORITY UNDER EXISTING LAW TO APPROVE A TARIFF THAT PASSES-THROUGH TO CUSTOMERS THE COSTS INCURRED BY A UTILITY TO PROCURE ELECTRICITY THROUGH A COMPETITIVE PROCUREMENT PROCESS."

The Building Owners and Managers Association of Chicago ("BOMA"), Trizec Properties, Inc. ("Trizec") and Shorenstein Realty Services, Inc. ("Shorenstein") respond as follows to Commonwealth Edison Company's memorandum entitled "The ICC Has Authority Under Existing Law To Approve A Tariff That Passes-Through To Customers The Costs Incurred By A Utility To Procure Electricity Through A Competitive Procurement Process." ComEd's memorandum states the position of only one party. The statements of ComEd in its memorandum were never discussed by the other parties to the Procurement Working Group. Moreover, as discussed further below, one should be aware that despite ComEd's memorandum there is no guarantee that a reviewing court would not reverse the Commission if it approves a competitive procurement process without a legislative change specifically authorizing such a process.

OGC Comment: Rarely does the Commission have a guarantee that a reviewing court will not disagree with its position. The possibility that a reviewing court may for some reason disagree with the Commission, is an inadequate reason for Commission inaction.

Under current law, post 2006 bundled rates must be set in accordance with Section 16-111(i). That provision requires the Commission to consider the extent to which the electricity component of rates exceeds 110% of the Section 16-112 market value. One readily apparent way the Commission can make this statutorily required comparison is if the electric utility proposes, and the Commission accepts, the competitive procurement process as a Section 16-112 "tariff…that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy." If the auction is not the determiner of market value under Section 16-112, it is difficult to see how the Commission could make the required comparison.

In its memorandum, ComEd asserts that the Commission has authority to approve a tariff that implements a competitive procurement process such as that contemplated by Scenarios 1 and 2. Such a tariff would contain the terms for a competitive procurement process, but would not contain any actual rates. ComEd equates the structure of this competitive procurement process with formulas for rate determination that the Commission and Illinois courts have approved in prior cases. ComEd states that current law supports this position. However, based on a review of the Illinois Public Utilities Act (the "PUA") and related cases, we believe the legal issues involved in implementing a competitive procurement process are more complicated than indicated by ComEd's memorandum.

The authority cited by ComEd is not squarely on point and therefore does not provide dispositive authority for ComEd's position. The competitive procurement process would be a departure from the "revenue requirement" approach to ratemaking which has been used by electric utilities in Illinois for nearly 100 years. The plain truth is that a reviewing court might or might not agree with ComEd's position if the Commission approves the competitive procurement process without a change to the PUA.

ComEd cites City of Chicago v. Illinois Commerce Commission, 13 Ill2d 607, 150 NE2d 776 (1958), in support of its position that a Commission-approved procurement process is authorized under existing law because it will define a formula for passing through costs. But the rate formula at issue in City of Chicago involved an automatic cost-of-natural-gas adjustment clause, and the only variable in the formula was the price of natural gas as established by the Federal Power Commission. 13 Ill2d at 608, 611. The competitive procurement processes in Scenarios 1 and 2 bear little resemblance to a formula for rate determination that uses, as its key variable, a price established by a federal regulatory body.

Additionally, ComEd lists its real-time pricing ("RTP") rates, Rate PR and Rider PPO as part of "ample precedent for rates and tariffs to specify formulas…" These tariffs do include formulas, but they should not be cited as precedent because each tariff is specifically authorized by the PUA. Section 16-103(b) of the PUA requires that utilities provide both an RTP rate and a PPO rate. 220 ILCS 5/16-103(b). Additionally, the RTP rate and Rider PPO are implemented under Sections 16-107 and 16-110 of the PUA, respectively. 220 ILCS 5/16-109, 116-110. Section 16-104 explicitly authorizes the creation of Rate PR. 220 ILCS 5/16-104(e),(f). These examples do not support ComEd's argument that the Commission has authority to approve a competitive procurement process under existing law.

In making a decision on whether a definitive statement can be made that no legislative change is required, one should review the case of Citizens Utility Board v. Illinois Commerce Commission, 275 Ill. App. 3d 329, 655 NE2d 961

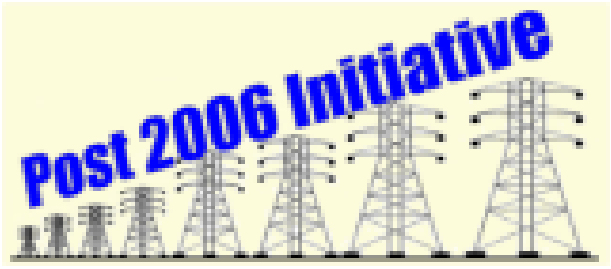
(1995). In that case, ComEd proposed a Rate CS tariff under which it would negotiate electricity supply contracts with Rate 6L customers who might construct cogeneration facilities. Like ComEd's expected competitive procurement process tariff, its Rate CS contained no specific rates or charges; actual charges for service under Rate CS would be determined later, through individual negotiations on a customer-by-customer basis. 655 NE2d at 963-64. The only limitation on Rate CS charges was that revenues from service to the customer had to be greater than the incremental costs to serve that customer. 655 NE2d at 964. Because Rate CS contained no rates, the court held that it did not comply with Section 9-102 of the PUA, which requires every utility to file schedules of its rates. 655 NE2d at 967. The court was careful to distinguish Rate CS from an "escalator clause," or mathematical formula, under which rates could fluctuate based on the cost of natural gas. 655 NE2d at 968. But the court stated that the Commission may not approve a tariff which permits a utility to set its own future rates, subject only to the condition that the utility not lose money on any particular deal. 655 NE2d at 968. This case also shows that, in considering the implementation of any procurement scenario, the Commission must be aware that under relevant case law an approved process from which charges to consumers are derived is not necessarily a "filed" or "just and reasonable" rate. Accordingly, it is not clear that a competitive procurement process approved by the Commission would definitely be upheld by the courts.

OGC Comment: The citation to Citizens Utility Board v. Illinois Commerce Commission, 275 Ill. App. 3d 329, 655 N.E. 2d 961 (1995), does not stand for the proposition that the Commission is powerless to act on a tariffed procurement method. However, the Commission must be mindful that it "not approve a tariff which permits a utility to set its own rates, *in futuro,* subject only to the condition that the rates contribute to the utility's fixed costs" by negotiating private contracts with customers. Citizens Utility Board 275 Ill. App. 3d at 340. As with the tariffs that were the subject of the cases cited by those suggesting the Commission has the authority to approve a tariff containing a competitive procurement process, the characteristics of the tariffed service Rate CS are distinguishable from those proposed in procurement scenarios 1 and 2.

In short, there is no crystal clear statutory basis for a competitive procurement process. What is clear is that the only way that it could be definitely assured that a competitive procurement process would not be overturned by the courts is to make a legislative change specifically authorizing such a process as was done in New Jersey. N.J.S.A. 48:3-57. On the other hand, the Commission is not prohibited by law from adopting a competitive procurement process without legislative change if this is the course the Commission decides to take. BOMA, Trizec and Shorenstein have filed this response to ComEd's memorandum merely for the purpose of pointing out that there potentially are risks to taking such an approach.

Illinois Commerce Commission

Post 2006 Initiative



RATES WORKING GROUP
REPORT TO THE
IMPLEMENTATION WORKING GROUP

I. Introduction

In accordance with the schedule for the Implementation Working Group ("IWG") of the Post-2006 Initiative sponsored by the Illinois Commerce Commission (the "Commission" or "ICC"), this Report describes the implementation of consensus items reached by the Rates Working Group ("RWG").

Section II of this Report identifies implementation Items reflected in Issues assigned to the RWG from the Commission's Issues List where: (1) the RWG discussed and reached consensus on specific implementation steps, or (2) a mode of implementation follows from the nature of the Issue or the consensus conclusion.[†] Thus, for example, in the case of the many items specifying modifications of tariff terms, the implementation items identify a rate proceeding as an appropriate vehicle for this reason. In cases where the RWG could not reach a single substantive consensus, but reached an agreement narrowing the options to defined alternative positions, each such alternative is identified and the implementation thereof is discussed.

Each Issue or sub-Issue that resulted in implementation Items is addressed separately in Section II. For each, individual implementation Items are designated and separately numbered. Where the RWG reached consensus on an Issue by referring to or adopting a prior consensus agreement on an earlier Issue, any implementation steps are reported along with the first Issue. Where an implementation step is identified, it refers to that Item alone. Thus, statements concerning the need for legislative amendment or revision of Commission regulations should be understood in the context of the Issue and Item. Statements about the need for, or the absence of need for, any implementation step with respect to a particular implementation Item are not intended to comment on the need for, or the absence of the need for, an action of that type in other circumstances.

Because of the purpose of this Report, the nature and extent of the inability to reach consensus on any Issue, or part of an Issue, is discussed only incidentally, if at all. The reader should consult the RWG's Final Report to the Commission concerning consensus and non-consensus items. The fact that non-consensus positions are not discussed further in this Report does not imply that there was substantive consensus, in whole or in part, or that there was consensus that implementation on those Issues should proceed anyway.

Section III of this Report discusses the timing of each type of implementation method (*e.g.,* via rate filing, legislative amendment, rulemaking) discussed in Section II.

[†] Although this Report is not limited to issues on which unanimity was reached during the substantive discussions of the RWG, at least one participant wished to reserve judgment on all implementation issues, stating that it did not have sufficient time to review the issues. Nonetheless, no specific divergent implementation methods have been proposed. However, because this Report reflects discussion among and comments provided by participants in the RWG; conclusions recited herein obviously cannot bind the Commission or a reviewing court.

II. Implementation Items

Issue 30) *Should the Commission initiate rate proceedings for each electric utility prior to 2007?*

Item 30-1 The Commission should not initiate rate proceedings for each electric utility prior to 2007. It was, however, the sense of the RWG that utilities seeking to implement a Procurement Scenario in whole or in part through a rate filing, should file such proceedings no later than the summer of 2005. Utilities seeking to implement other tariff changes related to RWG consensus items should make such filings in sufficient time for them to be effective as of the end of the Mandatory Transition Period ("MTP") or, if applicable, to accommodate the proposed Procurement Scenario.

This consensus item does not have a specific implementation step. However, the conclusion that the ICC should not initiate rate proceedings for each electric utility prior to 2007 was premised on the conclusion that at least those utilities not able and willing to continue to operate on a vertically-integrated basis under existing rates would each file comprehensive rate proceedings early enough to permit fully-litigated rates to become effective upon expiration of the MTP.

OGC Comment: As discussed below, in Part III of this report, Implementation Timeline, it is anticipated that rate proceedings would commence no later than February 2006, and that filings might well occur before then, depending on the complexity of the procurement scenario adopted.

Issue 31A) *Should rates be determined, and shown on the tariff sheets, for both bundled and delivery services, as individual rate components, in a manner such as: customer charge, meter charge, distribution delivery charge, transmission delivery charge, and supply charge?*

Item 31A-1 Utilities should determine and separately state the cost of the commodity component of bundled rates (*e.g.*, the costs of procuring power and energy and related portfolio and risk management functions) from other components of bundled rates (*e.g.*, distribution, customer charge).

This consensus item could be implemented during each utility's next rate proceeding. No legislative or regulatory change is required.

Item 31A-2 Each utility, when filing bundled electric service tariffs and/or unbundled electric delivery services rates to be effective after the expiration of the Mandatory Transition Period, should determine

and state the charge(s) for meter services that can be lawfully provided by a competitive Meter Services Provider separately from those for other delivery services.

This consensus item could be implemented during each utility's next rate proceeding. No legislative or regulatory change is required.

Item 31A-3 Rates subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") should be incorporated in Illinois-jurisdictional rates according to the Procurement Scenario and/or the design of the FERC-jurisdictional rate in force in that utility's service territory.

This consensus item could be implemented during each utility's next rate proceeding. No legislative or regulatory change is required.

OGC Comment to Items 31A-1, 31A-2, and 31A-3: OGC agrees that no legislative or regulatory changes are required. Further, as Item 31A-3 suggests, the filed rate doctrine precludes state regulatory commissions from altering wholesale rates established by FERC. See Nantahala Power & Light Co. v. Thornburg, 476 U.S. 953, 90 L. Ed. 2d 943, 106 S. Ct. 2349 (1986); General Motors Corp. v. Illinois Commerce Comm'n, 143 Ill. 2d 407, 574 N.E.2d 650 (1991).

Issue 31B) If so, should there be a single proceeding to reset the delivery component that would apply to both bundled rates and delivery service?

Item 31B-1 Utilities should synchronize the delivery charges in their bundled and unbundled rates (*i.e.*, set based on the same test year and cost-of-service approach).

This consensus item could be implemented during each utility's next rate proceeding. No legislative or regulatory change is required.

Item 31B-2 There should be a single proceeding to set unbundled distribution rates and the distribution components of bundled rates.

This consensus item could be implemented during each utility's next rate proceeding. No legislative or regulatory change is required.

OGC Comment to Items 31B-1 and 31B-2: OGC agrees that the consensus item could be implemented during each utility's next rate proceeding. Further, no legislative or regulatory change is required.

Issue 32) *Should each utility have the same customer classes for both bundled and unbundled customers?*

Item 32-1 Each utility should move toward synchronizing its bundled and unbundled customer classes subject to identified limitations.

This consensus item could be implemented during each utility's next rate proceeding and, to the extent full synchronization is not achieved in that case, in subsequent rate proceedings. No legislative or regulatory change is required.

OGC Comment: OGC agrees that the consensus item could be implemented during each utility's next rate proceeding. Further, no legislative or regulatory change is required.

Issue 33) *Should rates be reset on a monthly or yearly basis or should rates be fixed for a multi-year period? [S]hould an assortment of these products [i.e., multiple periods] be made available?*

Item 33-1 The appropriate time period(s) during which residential commodity prices in rates other than real-time pricing ("RTP") rates should remain fixed should be no less than one month (one bill cycle) as this period(s) relates to the commodity charges only; ICC-jurisdictional delivery charges should be reset under traditional rate case rules.

This consensus item could be implemented during each utility's next rate proceeding. No legislative or regulatory change is required.

Item 33-2 If RTP rates are offered, the acceptable periods during which commodity prices in non-RTP non-residential rates should remain fixed should be no less than one month (one bill cycle), as these periods relate to the commodity charges only; ICC-jurisdictional delivery charges should be reset under existing rate case rules.

This consensus item could be implemented during each utility's next rate proceeding. No legislative or regulatory change is required.

OGC Comment to Items 33-1 and 33-2: Please note that Section 16--102 of the Public Utilities Act defines "real-time pricing" as "charges for delivered electric power and energy that vary on an hour-to-hour basis for nonresidential retail customers and that vary on a periodic basis during the day for residential retail customers."

Issue 34A) *To what extent should non-competitive tariffed energy service offerings by utilities be hedged against fuel price / market price risks?*

Item 34A-1 Utilities should, in principle, include the costs of commodity acquisition, including the prudent and reasonable costs of associated hedging, in the costs paid by the customers using utility commodity services.

This consensus item could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. No legislative or regulatory change is required.

OGC Comment: The Public Utilities Act does not define the terms "hedge" or "hedging." In general, however, the concept refers to risk-management activities undertaken to reduce the hedger's exposure to unpredictable market changes. Hedging may be accomplished through a variety of means, including the use of financial derivatives such as options, futures, and swaps. See generally Comment, "A Primer on the Trade and Regulation of Derivative Instruments," 49 SMU L. Rev. 579, 583-86 (1996). No statutory definition of the term appears to be necessary.

Issue 34B) Should utilities attempt to hedge for their full expected load serving obligation, or only for a portion?

Item 34B-1 Utilities should at least partially hedge against variation in market prices included in the commodity portion of rates for residential and small commercial customers (as defined in the Illinois Public Utilities Act ("PUA")), either directly or through their commodity acquisition methods, in a manner appropriate given the Procurement Scenario. Utilities should not pass through a fully unhedged spot market price at least to residential and small commercial customers that are not taking service under a real time pricing rate.

This consensus item could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. No legislative or regulatory change is required.

OGC Comment: Section 16--102 of the Public Utilities Act defines "small commercial retail customer" as "those nonresidential retail customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area." Hedging would appear to promote the interests of residential and small commercial customers in stable and affordable electricity prices.

Issue 35) Should the type or extent of hedging be different for different classes of customers? For example, is the need for hedging less for customers who have greatest direct access to competitive markets?

Item 35-1 Utilities should offer to residential customers a stably-priced commodity service. †

The portion of this consensus item dealing with utility rates could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. No legislative or regulatory change is required. The RWG specifically noted that "it did not intend that these consensus items necessarily require a change in existing law, or suggest that a change be made." The portion, if any, of this item that also addressed the implementation of a specific Procurement Scenario is addressed in the report of the Procurement Working Group ("PWG") to the IWG and in the discussion of the implementation of Scenarios, below.

OGC Comment: It is not surprising that there would be a difference of opinion whether stably priced service should be available to non-residential customers. Different ways of treating different categories of customers should be based on their distinctive characteristics and attributes, for all customers, of whatever category, share an interest in receiving "safe, reliable, affordable, and environmentally safe electric service." The Electric Service Customer Choice and Rate Relief Law of 1997 recites as one of its legislative findings, "A competitive wholesale and retail market must benefit all Illinois citizens. The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service." 220 ILCS 5/16--101A(d).

Item 35-2 Utilities should manage upstream or through an acquisition process residential and small commercial retail customers' (as defined in the Act) quantity and price risk, as those groups can not practically manage those risks.

The portion of this consensus item dealing with utility rates could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. No legislative or regulatory change is required. The RWG specifically noted that "it did not intend that these consensus items necessarily require a change in existing law, or suggest that a change be made." The portion, if any, of this item that also addressed the implementation of a specific Procurement Scenario is addressed in the report of the

† The RWG acknowledged that the issue of price variability is important for non-residential customers as well, but did not reach consensus on whether a stably-priced commodity service should be offered to non-residential customers by utilities.

PWG to the IWG and in the discussion of the implementation of Scenarios, below.

OGC Comment: OGC agrees that the consensus item could be implemented during each utility's next rate proceeding. Further, no legislative or regulatory change is required. As noted earlier, Section 16--102 of the Public Utilities Act defines "small commercial retail customer" as "those nonresidential retail customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area."

Item 35-3 To the extent that utilities offer a stably-priced commodity service to customers, the price and quantity risks that arise from that offering should be managed at least in part by the utility, directly and/or through its acquisition process.

The portion of this consensus item dealing with utility rates could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. No legislative or regulatory change is required. The RWG specifically noted that "it did not intend that these consensus items necessarily require a change in existing law, or suggest that a change be made." The portion, if any, of this item that also addressed the implementation of a specific Procurement Scenario is addressed in the report of the PWG to the IWG and in the discussion of the implementation of Scenarios, below.

OGC Comment: OGC agrees that the portion of this consensus item dealing with utility rates could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. Further, no legislative or regulatory change is required.

Issue 36) How should hedging costs be recovered in utility rates? How should prudence for hedging efforts and costs be assessed?

Item 36-1 Utilities should be able to recover from the customers receiving a hedged product the prudent and reasonable costs of the hedging.

This consensus item could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. No legislative or regulatory change is required.

OGC Comment: Hedging profits would presumably be offset by increased costs of procurement of the underlying commodity. To the extent that hedging profits exceed the underlying costs, it might also be necessary to give consideration to the appropriate ratemaking treatment of those profits.

Item 36-2 Unbundled customers who do not take commodity service from a utility may, in principle, be responsible for incremental commodity costs, if any, caused by the exercise of an option to return to utility commodity service, if and when such customers elect to return. The RWG could not reach consensus on whether they should or should not be responsible for any such costs prior to the exercise of any option to return. However, the RWG did reach consensus these customers should not be responsible for utility commodity costs in any other circumstance.

This consensus item could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. No legislative or regulatory change is required.

OGC Comment: OGC agrees that this consensus item could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. Further, no legislative or regulatory change is required.

Item 36-3 The ICC should not reexamine the prudence of a procurement plan to manage price risk if it is within the scope of the Commission's authority to review and pre-approve, and is in fact reviewed in advance and approved by the Commission as prudent. Where it is appropriate for the Commission to assess prudence retrospectively, the Commission should apply traditionally accepted prudence standards and rules of evidence. Where it is appropriate for the Commission to assess prudence prospectively or contemporaneously, the Commission should apply traditionally accepted prudence standards and rules of evidence to the process being used and the utilities' actions.

This consensus item could be implemented during each utility's next rate proceeding or, in the case of Procurement Scenarios that may be implemented by a distinct rate filing, in that filing as well. No legislative or regulatory change is required.

OGC Comment: The Commission and Staff have experience in handling prudence-related inquiries, such as those conducted in the review of fuel-adjustment charges. It is not clear, however, what a prospective assessment of prudence with regard to hedging could meaningfully entail, beyond the Commission's providing a set of guidelines for use by the utility in establishing, monitoring, and closing out particular hedging activities. Accordingly, subsequent review of a company's compliance with such guidelines would appear to be both appropriate and necessary. In addition, the possible complexity and variety of hedging strategies may make retrospective review all the more necessary. The Commission can review a procurement methodology at any time. The nature and specificity of the Commission's advance approval of risk-

management activities are important considerations in determining the degree to which prudence review is appropriate and the manner in which it should be conducted. For example, under traditionally accepted prudence standards, if the Commission requires a company to take a certain step, then later review should probably be of a limited scope, focusing on whether the company carried out that program in a proper fashion. But if the Commission merely authorizes or permits a company to choose among a number of options, and gives the company wide latitude in its choice, without suggesting to the company that the Commission has already declared a particular course of action to be prudent, then a more searching subsequent review is probably appropriate and necessary.

Issue 37) *To what extent can rate design and switching rules reduce the costs of hedging? What are the implications for such changes on the competitive retail marketplace?*

Item 37-1 The RWG reached consensus that rate design and switching rules can impact the costs of commodity hedging and can have an impact on the competitive marketplace.

The possible impact on the competitive marketplace and hedging costs should be considered along with rate design and switching rules in the relevant Commission proceedings. Except as otherwise may be required by the Procurement Scenario, no legislative or regulatory change is required.

OGC Comment: Please note that rate design and switching rules, by reducing the costs of hedging or the need for hedging, may similarly alter the prudence inquiry relevant to a consideration of an electric utility's hedging strategies and measures.

Issue 38) *How can the costs of providing tariffed non-competitive energy service best be recovered by utilities? Should rates simply be fixed at levels that are forecast to recover utility costs? Alternatively, should rates be based on a relatively current measure of market value and perhaps be reset frequently. Should new market value estimation methods be developed if rates are to be based on market indices? What, if any, are the uses for the Neutral Fact Finder processes in the post-2006 period?*

Note: This Issue was discussed principally in the context of individual Procurement Scenarios. While the RWG did not reach consensus on a specific Scenario (that was outside its scope), we did reach consensus on "alternative consensus items" relating to the cost recovery and ratemaking issues posed by the Question in the context of each Scenario. Except as expressly stated with respect to the rate-related Issue included herein, the RWG did not discuss whether or how a particular Scenario should be implemented. What follows is an assessment of the implementation issues relating to those cost recovery and ratemaking features for each such Scenario and alternative consensus item.

Item 38-1 Under Scenarios 1 ("Full Requirements Auction") & 2 ("Full Requirements RFP"), utilities should pass through, with no "mark-ups" or "return" on, the costs of the commodity itself.

This alternative consensus item could be implemented during each utility's next rate proceeding and, if this Procurement Scenario is also implemented through another distinct filing, in that filing as well. No legislative or regulatory change is required. This alternative consensus item could be implemented legislatively as well.

OGC Comment: OGC agrees that this alternative consensus item could be implemented during each utility's next rate proceeding and, if this Procurement Scenario is also implemented by a distinct rate filing, in that filing as well. Further, no legislative or regulatory change is required, assuming that the filing complies with Section 16-111(i) and other relevant provisions of the Public Utilities Act.

Item 38-2 Under Scenarios 1 ("Full Requirements Auction") & 2 ("Full Requirements RFP"), if a capacity-only auction is conducted for at least some customers which is combined with real-time energy prices, then the energy component for those customers should be based upon hourly real-time prices that are passed through, and the capacity component should be derived from the auction results, assigned as described above.

This alternative consensus item could be implemented during each utility's next rate proceeding and, if this Procurement Scenario is also implemented through another distinct filing, in that filing as well. No legislative or regulatory change is required. This alternative consensus item could be implemented legislatively as well.

OGC Comment: OGC agrees that this alternative consensus item could be implemented during each utility's next rate proceeding and, if this Procurement Scenario is also implemented by a distinct rate filing, in that filing as well. Further, no legislative or regulatory change is required, assuming that the filing complies with Section 16-111(i) and other relevant provisions of the Public Utilities Act.

Item 38-3 Under Scenario 3 ("Acquisition by Horizontal Tranche or Market Segment"), utilities' rates should include their costs of acquisition of the capacity and energy and the costs of hedging, if any.

This alternative consensus item could be implemented during each utility's next rate proceeding and, if this Procurement Scenario is also implemented through another distinct filing, in that filing as well. No legislative or regulatory change is required. This

alternative consensus item could be implemented legislatively as well.

OGC Comment: OGC agrees that this alternative consensus item could be implemented during each utility's next rate proceeding and, if this Procurement Scenario is also implemented by a distinct rate filing, in that filing as well. Further, no legislative or regulatory change is required, assuming that the filing complies with Section 16-111(i) and other relevant provisions of the Public Utilities Act.

Item 38-4 Under Scenario 4 ("Affiliate Purchases"), utilities' rates should include their costs of acquiring the capacity and energy and the costs of hedging, assuming that there is evidence, sufficient under law, that no affiliate abuse has occurred.

This alternative consensus item could be implemented during each utility's next rate proceeding and, if this Procurement Scenario is also implemented through another distinct filing, in that filing as well. No legislative or regulatory change is required. This alternative consensus item could be implemented legislatively as well.

OGC Comment: As the Rates Working Group notes in its final report, "the Illinois Commerce Commission may retain jurisdiction to review rates including FERC-jurisdictional rates, as permitted by federal law, e.g., under the "Pike County" doctrine. (See Pike County Light & Power Co. v. Pennsylvania Public Utility Comm'n, 465 A.2d 735 (Comm. Ct. of Pa. 1983))." RWG Final Report, pp. 16-17 (discussing Scenario 4).

Item 38-5 Under Scenario 5 ("Market- or Cost-Index Approach"), where the rates are based on an external benchmark, there is no role for *post hoc* regulatory review of the prudence of utilities' acquisition process, providing that the index has not been manipulated, and there is no "safety valve" or other mechanism to change the benchmark after the fact.

This alternative consensus item could be implemented during each utility's next rate proceeding and, if this Procurement Scenario is also implemented through another distinct filing, in that filing as well. It could also be implemented through ICC proceedings addressing the determination and review of the index. No legislative or regulatory change is required. This alternative consensus item could be implemented legislatively as well.

OGC Comment: Section 16--111(i) does in fact contain a safety valve applicable after the mandatory transition period, authorizing the Commission to limit tariffed rates for electricity to market value plus 10%.

Item 38-6 Under Scenario 6 ("Integrated Resource Planning"), utilities should recover commodity acquisition costs as in Scenario 3. If the

Integrated Resource Planning ("IRP") process, after identifying a resource need, relies on the acquisition process from another Scenario as the means for procuring that resource, then the principles applicable to the other procurement mechanism in that other Scenario should be borrowed.

If Scenario 6 is selected as a procurement approach, then the recovery of commodity acquisition costs reflected in this alternative consensus item could be implemented during the utility rate proceeding following the established planning process and in whatever proceedings are required to develop, review, and approve the plan. Legislative change will be required to implement pre-procurement integrated resource planning, and enabling regulations will also have to be adopted.

OGC Comment: The legislative change referred to could entail the reenactment of provisions requiring electric utilities to undertake resource planning. An earlier provision on least-cost planning, formerly found in Section 8--402 of the Public Utilities Act, was repealed at the same time the Electric Service Customer Choice and Rate Relief Law of 1997 was enacted.

Item 38-7 Under Scenario 7 ("Extension of the Transition Period"), utilities will recover their commodity costs, in whole or in part, through existing, frozen bundled rates and through other rates that include commodity components at charges found to be just and reasonable by the Commission.

This alternative consensus item would need to be implemented through legislative change providing for an extension of the transition period. Utilities would implement other RWG consensus items relating to the term of their rates, including revisions to delivery rates, through rate proceedings under existing law.

OGC Comment: As noted, implementation of Scenario 7 would require the legislature to extend once more the mandatory transition period and rate freeze provided by the Electric Service Customer Choice and Rate Relief Law of 1997.

Item 38-8 The commodity component in rates under this Scenario 8 ("No Changes") should reflect the costs of acquisition (capacity, energy, and commodity-related risk management).

This alternative consensus item could be implemented during each utility's subsequent bundled and DST rate proceedings. No legislative or regulatory change is required.

Item 38-9 Utilities, under Scenario 9 ("Vertically Integrated Utility Supply"), will recover production costs under traditional ratemaking principles or alternative regulation as allowed by law.

For those utilities that remain fully integrated, this alternative consensus item could be implemented during each utility's subsequent bundled and DST rate proceedings. No legislative or regulatory change is required. For utilities that are not integrated, implementation of this Scenario itself would require repurchase and integration of assets or significant generation construction by the utility, both of which would likely require legislative change and that would likely involve questions under the Federal Power Act that were outside the scope of the RWG's discussions. Rate proceeding(s) to implement the cost recovery features would follow.

OGC Comment: As noted in the Item, legislation would be necessary to carry out this scenario with respect to the electric utilities that have largely divested themselves of generation facilities.

Item 38-10 Under Scenario 10 ("Re-Regulation of Electricity Production"), utilities will recover production costs under traditional ratemaking principles or alternative regulation as allowed by law.

Prior to implementing the cost recovery mechanism reflected in this alternative consensus item, implementation of this Scenario itself would require legislative change and would also likely involve questions under the Federal Power Act that were outside the scope of the RWG's discussions. Rate proceeding(s) to implement the cost recovery features would follow.

OGC Comment: Rates for wholesale power transactions are under the jurisdiction of FERC, as noted with respect to Item 31A-3.

Item 38-11 Under Scenario 11 (originally, the "Texas Model," subsequently revised before the PWG and renamed the "Market Responsive Pricing Model"), there could be no commodity costs for the utility *per se* to recover to the extent that it is generally relieved of the obligation and authority to provide retail bundled or unbundled commodity service. To the extent that utilities remain obligated to provide a standard offer commodity service, the commodity component of this service should be reflected in rates in the manner described for the Procurement Scenario used to secure the required resources.

Prior to implementing the cost recovery mechanism reflected in this alternative consensus item, Scenario 11 would have to be implemented.[†] Thereafter, rate proceeding(s) would be required to

[†] While the implementation of Procurement Scenarios generally is outside of the RWG's scope, disagreement arose during the drafting of this Report about whether Scenario 11 could be implemented without legislative change. *See* PWG reports and materials for further details. However, under the principal version of this Scenario, legislative changes could provide that a utility should no longer: (a) be

set the default rates (*i.e.,* the customer default price(s) and the transparent adjustment mechanism; see PWG reports and materials for further details).

OGC Comment: Section 16--103 of the Public Utilities Act, which describes the continuing service obligations of electric utilities to different classes of customers, could be affected by this proposal.

Item 38-12 A voluntary green pricing rate should allocate, under Scenario 12 (Renewables), any incremental cost of required resources to the "green pricing" customers, and not to other customers. If there is a general requirement to use renewable resources (*e.g.*, a Renewable Portfolio Standard), any incremental costs should be recoverable through rates, and if the requirement is applied equally to all suppliers, utility and competitive, such costs should be recovered through the commodity rate (assuming all suppliers have the obligation).

A voluntary green pricing rate, as described in this alternative consensus item, could be implemented during a standard rate proceeding. No legislative or regulatory change is required. Adopting a mandatory Renewable Portfolio Standard ("RPS") with the described cost recovery features will require legislative change and, most likely, the adoption of implementing rules by the ICC. Inclusion of incremental costs in utility rates would be accomplished in a rate proceeding.

OGC Comment: As Item 38-12 notes, legislation would be necessary to impose a mandatory Renewable Portfolio Standard on electric utilities and their customers. See also Issues 94-96 and accompanying OGC Comment.

Item 38-13 Traditional cost-of-service regulation should apply to generation directly owned by a utility, unless the utility or another party proposes an alternative regulatory approach with respect to such assets as permitted by law.

This alternative consensus item could be implemented during each affected utility's next rate proceeding or alternative regulation proceeding. No legislative or regulatory change is required.

OGC Comment: The provisions on alternative rate regulation are contained in Section 9--244 of the Public Utilities Act.

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the default provider for any customer class after a specified number of years; (b) be required to offer commodity service as rates become competitive; (c) have to petition to declare a bundled rate competitive; and (d) be able to offer competitive services (a competitive affiliate may do so). Potential revisions to regulations governing ARES, relationships with utility affiliates, marketing, and consumer protections, may also be required.

Issue 40) *If utilities are required or permitted to take actions to reduce price risk or the volatility of their costs, how should these costs be recovered?*

Item 40-1 For Scenarios that include advance supply purchases (*e.g.,* RFPs or auction plans) or explicit resource supply plans, if the Commission has ultimate authority to pre-approve a plan to manage risk, and if a plan to manage price risk is reviewed in advance and approved by the Commission as prudent, the prudence of the plan itself should not be re-examined after the fact. However, pre-approval of a plan does not and cannot affect regulatory inquiry, under a prudence or justness and reasonableness standard, into whether and how the plan was followed, or whether it should be amended or terminated.

This consensus item could be implemented, in the case of Scenarios not requiring legislative change to implement, through the utility's filed rates, in any ICC regulations governing review of the procurement costs included in rates (including, to the extent that a fuel adjustment clause is used, the implementing regulations), and through the ICC order approving the procurement process. In the case of Scenarios that have explicit resource plans, this consensus item would be implemented in the enabling legislation and regulations, as well as in ICC orders thereunder.

OGC Comment: Limitations on the Commission's subsequent review of the prudence of risk-management plans should be related to the nature and specificity of the advance directive or approval given by the Commission with respect to the particular activity, and the extent to which relevant information concerning the plan could be known in advance. The nature and extent of any prudence review will vary, depending on the range of choices available to the utility in pursuing a particular course of action. For example, if the Commission requires a company to take a certain step, then later review should probably be of a limited scope, focusing on whether the company carried out that program in a proper fashion. But if the Commission merely authorizes or permits a company to choose among a number of options, and gives the company wide latitude in its choice, without suggesting to the company that the Commission has already declared a particular course of action to be prudent, then a more searching subsequent review is probably appropriate and necessary.

Item 40-2 Where it is appropriate for the Commission to assess prudence retrospectively, the Commission should apply traditionally accepted prudence standards and rules of evidence. Where it is appropriate for the Commission to assess prudence prospectively or contemporaneously, the Commission should apply traditionally accepted prudence standards and rules of evidence to the process being used and the utilities' actions.

This consensus item could be implemented in any Commissions proceedings in which it is appropriate to assess prudence retrospectively. No legislative or regulatory change is required.

OGC Comment: The potential complexity of hedging arrangements may require that traditional prudence standards be specially tailored to fit the demands of complicated forms of risk management. As noted earlier, a prospective assessment of prudence would presumably entail the creation of a set of guidelines for hedgers to use in establishing, monitoring, and closing out their positions. Moreover, subsequent review of an electric utility's compliance with those guidelines should be available.

Issue 41) *Rate design issues can also have significant competitive implications. Unless rates are designed to send correct price signals, economically efficient consumption decisions and economically efficient competition will not necessarily result. How can decisions about the method of recovery of production costs and the allocation of those costs among rates and customers be made in a manner likely to promote efficiency, and efficient competition between providers and resources?*

Item 41-1 The commodity component of each utility's rate design should be based on the utility's costs of procuring and providing the required production resources and that differences between commodity charges should be based on differences in the cost of supply resources required to serve the load subject to three identified limitations. First, cost-based generation rate designs may be phased-in, if and where inappropriate rate shock would otherwise result. Second, special generation rate designs may be called for by energy assistance policies identified by the Energy Assistance Working Group, or to appropriately promote demand-side response, energy efficiency, or the use of renewable resources. Finally, the policy favoring cost-based rate designs should not be viewed as barring or limiting authorized alternative regulation plans. For this purpose, utilities should include as production costs, the costs of generation, the costs of purchased power, and costs of providing purchased power. The production costs, so defined, should be allocated based on the cost of providing the production service.

This consensus item should be implemented during each utility's next rate proceeding and, if the Procurement Scenario applicable to the utility is also implemented through another distinct filing, in that filing as well. No legislative or regulatory change is required to implement this Item, although such change may be required to implement the applicable Procurement Scenario.

OGC Comment: This consensus item could be implemented during each utility's next rate proceeding and, if the Procurement Scenario applicable to the utility is also

implemented through another distinct filing, in that filing as well. No legislative or regulatory change is required to implement this item.

Issue 42) *Should the cost of power be determined as a fixed amount in base rates from rate case to rate case?*

Item 42-1 The RWG principally addressed this Issue in connection with those Scenarios where production costs are necessarily determined in a traditional rate case (*e.g.,* Scenarios 9 & 10), as opposed to Scenarios that utilize a formula approach (*e.g.,* Scenarios 1 – 3) or a fuel cost adjustment mechanism. The RWG understands that the Commission has the legal authority to establish, in a rate case, the production components of retail energy rates at a lawful and just and reasonable level regardless of the Scenario chosen, but did not reach a consensus as to if, or under what circumstances, such components should be fixed.

The Commission can exercise its legal authority to establish, in a rate case, the production components of retail energy rates at a lawful and just and reasonable level regardless of the Procurement Scenario chosen. No legislative or regulatory change is required to implement this Item, although such change may be required to implement some Procurement Scenarios.

OGC Comment: OGC agrees that no legislative or regulatory change is required to implement this item.

Issue 43) *Should some or all customer rates reflect market indices? How would costs be recovered if some rates were to reflect market indices? Should new market value estimation methods be developed if rates are to be based on market indices? What are the uses, if any, for the Neutral Fact Finder processes in the post-2006 period?*

Item 43-1 Whether the commodity component of non-RTP customer rates (other than the PPO, as required by law) should utilize a market index is dependent upon whether the Procurement Scenario uses such an index.

This consensus item could be implemented during each utility's next rate proceeding, consistent with the applicable Procurement Scenario. No legislative or regulatory change is required, unless it is required to implement the applicable Procurement Scenario. Use of a market index could require a legislative change if the index does not reflect the cost of procurement to the utility or if the price to the customer does not reflect the utility's cost.

OGC Comment: Please note that Section 16--111(i), concerning tariffed rates following the end of the mandatory transition period, provides for the use of a price limitation on

the electricity component; that limitation is set by reference to the market value and may not exceed 110% of that value.

Issue 45) *Should 83 Ill. Adm. Code 425 be modified to address demand costs, transmission costs, interest, and reinstatement of a fuel adjustment clause after the end of the mandatory transition period? Should the Commission develop rules for a new power purchase clause? Should a separate transmission charge (perhaps a rider) be considered? (As opposed to transmission being included as part of a fuel adjustment clause)*

Item 45-1 83 Illinois Administrative Code Part 425 should not be modified to address demand costs, transmission costs, interest, and reinstatement options, as noted in this Issue, unless it is found to be inconsistent with any of the Procurement Scenario(s) ultimately approved by the Commission or to prohibit the recovery of transmission costs through a rider or similar tariff mechanism.

No implementation is required, unless 83 Illinois Administrative Code Part 425 is found to be inconsistent with any of the Procurement Scenario(s) ultimately approved by the Commission or to prohibit the recovery of transmission costs through a rider or similar tariff mechanism. In such case, this consensus item should be implemented, to the extent allowed by law, by a rulemaking proceeding to modify Part 425.

OGC Comment: Part 425 contains rules involving fuel adjustment clauses. Amendments to administrative rules would follow the relevant rulemaking timetable prescribed by article 5 of the Illinois Administrative Procedure Act (5 ILCS 100/5--5 through 5--165).

Issue 46) *Can or should rates be restructured to eliminate inter and intra-class subsidies in existing bundled rates?*

Item 46-1 The RWG identified two possible outcomes: (a) Utilities should restructure rates to eliminate inter- and intra-class subsidies in existing bundled rates; and (b) elimination of inter- and intra-class subsidies in pre-2007 bundled rates is one goal that can be considered along with other ratemaking goals, such as those identified in response to Issue 48, with respect to delivery and customer service components. The RWG did not reach a consensus as to one of these two alternatives.

Either alternative described in this consensus item can be implemented during each utility's rate proceeding(s) during which such existing bundled rates are at issue. No legislative or regulatory change is required.

OGC Comment: Section 16--111(i) may be relevant in this regard. With regard to rates for tariffed services established following the end of the mandatory transition period, the Commission is to consider "(1) the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services[.]" In addition, a legislative finding contained in Section 16--101A(d) of the Act provides, "Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable and environmentally safe electric service." The RWG's failure to reach consensus on this difficult issue reflects the competing concerns that may be voiced on the question of subsidies.

Issue 47) *Should "special rates" (e.g., space heating, lighting) be maintained?*

Item 47-1 Rate and pricing structures that properly reflect cost causation and equitable cost recovery principles, along with other traditional rate design principles identified in response to Issue 48, should be considered when addressing loads that have been eligible for service under such special rates.

This consensus item will be implemented during each utility's rate proceeding(s) during which such rates are at issue. No legislative or regulatory change is required.

OGC Comment: This consensus item can be implemented during each utility's next rate proceeding. No legislative or regulatory change is required to implement this item.

Issue 48) *Should charges be restructured to more accurately reflect the costs of providing delivery and customer services that do not vary significantly based on the kilowatt-hours consumed (e.g., standby service rates)?*

Item 48-1 The Commission, during any restructuring of rates to accurately reflect the actual costs of providing delivery and customer services, should consider traditional rate design principles, such as reasonableness, rate continuity, avoidance of rate shock, customer equity, customer understanding, and reflecting fixed costs in fixed charges and variable costs in variable charges.

This consensus item will be implemented during each utility's rate proceeding(s) during which the referenced restructuring is at issue. No legislative or regulatory change is required.

OGC Comment: This consensus item can be implemented during each utility's next rate proceeding. No legislative or regulatory change is required to implement this item.

Item 49) *Should some or all rates for some or all of the rate classes be determined on a seasonal basis?*

Item 49-1 The RWG reached consensus that seasonal rates may be appropriate, where the costs are found to vary seasonally.

If such rates are determined to be appropriate, they can be implemented during each utility's rate proceeding(s) No legislative or regulatory change is required.

OGC Comment: This consensus item can be implemented during each utility's next rate proceeding. No legislative or regulatory change is required to implement this item.

Issue 50) *Should rates for customers who return to bundled service be different from the rates offered to basic bundled service customers? Do customers who move back and forth between bundled services and delivery services cause additional costs that should be charged only to those customers?*

Item 50-1 Under Scenarios 1 and 2, if the switching and volume risk is priced into the Request for Proposal ("RFP") or into auction bids, and borne by the wholesale suppliers in an undifferentiated manner, then there is no need for commodity charges to customers returning to "bundled" service to differ from those applicable to customers who have never left "bundled" service.

This consensus item could be implemented during each utility's next rate proceeding and, if these Procurement Scenarios are also implemented through a distinct rate filing, in that filing as well. No legislative or regulatory change is required.

Item 50-2 Under Procurement Scenarios where the risks and costs of migration are built into the bid price in an undifferentiated manner, retail customers should be able to come to and go from the standard offer service (*i.e.*, the "bundled" rate applicable to their class).

This consensus item could be implemented during the utility's rate proceeding following adoption of the Procurement Scenario. No legislative or regulatory change is required.

Item 50-3 Where the risks and costs of the migration of customers able to return to the standard offer service (*i.e.*, the "bundled" rate applicable to their class) are not built into undifferentiated supply bid prices (*e.g.*, vertical integration, an RFP with explicitly higher costs for intra-period returning customers, traditional cost-of-service models), utilities may provide in rates that returning customers pay commodity charges reflecting the incremental cost, if any, of their return to utility commodity service in Procurement Scenarios. A minimum stay period, which may be coupled with a cost based charge for early termination, may also be used.

This consensus item could be implemented during the utility's rate proceeding following adoption of the Procurement Scenario. No legislative or regulatory change is required.

OGC Comment to Items 50-1, 50-2, and 50-3: These consensus items can be implemented during each utility's next rate proceeding following the adoption of the Procurement Scenario. No legislative or regulatory change is required to implement these items.

Issues 52) How should costs related to energy efficiency and demand reduction be charged in rates?

Item 52-1 Utilities should fully include the change (whether in net costs, or net savings), if any, in commodity acquisition expense to the utility as a result of energy efficiency and demand reduction programs (*e.g.*, voluntary load reduction programs, or direct load control programs) in the utility's commodity rates. The net change in costs (whether an increase or decrease) of such programs in the utility's delivery expense or investment should be included in its delivery charges, and allocated to facility, customer and/or meter-related charges as appropriate.

This consensus item could be implemented during the utility's rate proceeding following adoption of any energy efficiency and demand reduction program. No legislative or regulatory change is required.

OGC Comment: OGC agrees that this consensus item can be implemented during each utility's next rate proceeding. No legislative or regulatory change is required to implement this item.

Issue 54B) What kind of rate structures support efficiency? Time of Use rates for business and residential customer classes? Amending of declining block rate structures so that the first block of kWhs on a customer bill are the cheapest kWhs, and the additional kWhs are more expensive?

Item 54B-1 If hourly pricing rates are offered to residential customers or to non-residential customers prior to a declaration of competitiveness for such customers or the abandonment of other rates to such customers, they should be offered to such customers as optional rates, with the following caveats: (a) there was no consensus as to whether hourly pricing rates should be optional for customers for whom hourly pricing rates are not currently optional under existing tariff, law, or regulation or for nonresidential customers that require standby or interim supply service; and (b) there was no consensus as to whether such rates should also be optional for non-residential customers after a declaration of competitiveness or the abandonment of other rates.

This consensus item could be implemented during each utility's rate proceeding(s). No legislative or regulatory change is required.

Item 54B-2 Utilities should not prohibit or unreasonably impede retail customers from participating in Regional Transmission Organization ("RTO") programs for which they are otherwise eligible.

This consensus item could be implemented during each utility's rate proceeding(s). No legislative or regulatory change is required.

OGC Comment to Items 54B-1 and 54B-2: OGC agrees that these consensus items can be implemented during each utility's next rate proceeding. No legislative or regulatory change is required to implement these items.

Issue 55) Should there be an interruptible rate option for transmission and distribution services and/or generation services? How should such a rate be designed?

Item 55-1 Utilities should be able to implement and utilize voluntary programs to reduce end use customer load to address constraints on the transmission or the utility's distribution systems.

This consensus item could be implemented during each utility's rate proceeding(s). No legislative or regulatory change is required.

OGC Comment: OGC agrees that this consensus item can be implemented during each utility's next rate proceeding. No legislative or regulatory change is required to implement this item.

Issue 56) Should utilities be required to demonstrate consideration of energy efficiency, demand reduction, and distributed generation strategies as part of any proposal for new distribution and/or transmission facilities?

Item 56-1 All stakeholders should promote the consideration of appropriate energy efficiency, demand reduction, and distributed generation resources as part of the RTO transmission planning process.

This consensus item will be implemented by the participants themselves in connection with their interaction with RTOs and FERC. No legislative or regulatory change is required at the Illinois level.

OGC Comment: This consensus item can be implemented by the participants themselves. No Illinois legislative or regulatory change is required to implement this item.

Issue 57) What are the circumstances under which PPO must be offered subsequent to the end of the mandatory transition period? How should Sec. 16-110 provisions be implemented by the utilities that are required to offer PPO service after 2006?

Item 57-1 Utilities that have collected any transition charges from customers taking delivery services should reflect post-transition PPO prices in new or revised PPO rates to be effective prior to any notice period required of such eligible customers. Presuming that the market value determined under Section 16-112 is a function of the power Procurement Scenario adopted by the utility, the form of these PPO rates should be consistent with Procurement Scenario selected.

This consensus item will be implemented by the affected utilities filing revised tariffs as required, subject to ICC review. This filing could be accomplished in concert with the utilities' other rate filings relating to post-transition service offerings and/or procurement. No legislative or regulatory change is required.

OGC Comment: This consensus item can be implemented during each utility's next rate proceeding. No legislative or regulatory change is required to implement this item.

Issue 58) *Should existing real-time tariffs be modified to encourage customer interest in such tariffs? If so, what modifications are necessary?*

Item 58-1 Existing non-residential Real-Time Pricing tariffs should, if necessary, be modified effective after the end of the MTP to reflect the cost of service, no later than as part of the utility's first general rate proceeding proposing rates to be effective after the end of the MTP.

This consensus item could be implemented during each utility's rate proceeding following the end of the MTP. No legislative or regulatory change is required. Real time pricing rates could also be modified in other proceedings to implement improvements.

OGC Comment: This consensus item can be implemented during each utility's next rate proceeding. No legislative or regulatory change is required to implement this item.

Issue 60) *What level of reward (or opportunity) is appropriate for a distribution company who purchases "safety net" service for customers? What level of power procurement risk is appropriate for distribution companies?*

Item 60-1 Utilities should be able to recover the variable and, if any, fixed costs associated with offering these services.

Recovery of variable costs and fixed costs, if any, could be accomplished through each affected utility's next rate or alternative regulation proceeding. No legislative or regulatory change is required.

OGC Comment: "Safety net" services are not defined in the Public Utilities Act. A legislative definition of the term might be necessary if the term is to have an established meaning.

Issue 65) *Should the requirements related to approval of alternative regulation plans be revisited with a goal of setting forth more realistic requirements so such plans could actually be implemented?*

Item 65-1 Requirements related to the approval of alternative regulation plans should not be revisited as part of the post-2006 transition process.

This consensus item does not require a specific implementation step. No legislative or regulatory change is required.

OGC Comment: The provision on alternative rate regulation is found in Section 9--244 of the Public Utilities Act.

Issue 93) *Is there a role for economic development "rates" in a post-transition marketplace? If so, should tariffed non-competitive energy services offered by utilities be the vehicle, or can the State implement economic development programs through the competitive sector as well?*

Item 93-1 Utilities should not offer, except for contracts or delivery service rate components that are cost-based or that address uneconomic bypass, new economic development contracts or rates in a post-transition marketplace. Existing contracts should not be abrogated.

This alternative consensus item could be implemented during each affected utility's rate proceeding(s) or other proceedings before the Commission. No legislative or regulatory change is required.

OGC Comment: Because no change is recommended, no legislative or regulatory action would be necessary.

Issue 94) *Should the State mandate a renewable portfolio standard ("RPS") as part utilities' post-2006 energy procurement process?*

Issue 95) *If so, what types of resources (e.g., wind, biomass, solar, waste burning, landfill gas) should qualify as renewable resources for the purposes of the RPS?*

Issue 96) *If so, at what level(s) should the standard be set? Should is specify a particular quantity of renewable resources or express the standard as a percentage of the LSEs load? Should the standard be defined in terms of aggregate MWhs used or MWs of capacity?*

Note: The RWG could not reach consensus as to whether an RPS should be adopted and, if so, by what governmental body. The Items below

reflect discussion in the RWG about what should be included in an RPS, if one were adopted..

Item 94-1 If an RPS is mandated by the State of Illinois, the RWG reached consensus that there are important considerations that must be reflected: (1) it must be aligned with the post-2006 procurement process and facilitate the acquisition of cost-effective renewable energy; (2) it must be competitively neutral and consistent with the consensus on RPS issues reached by the Competitive Issues Working Group; (3) it must address cost recovery consistent with the consensus reached in the Rates Working Group; and (4) it must consider the effect of the use of renewable resources on rates.

Adopting a mandatory RPS with the described features will require legislative change and, most likely, implementing regulations. These features should be reflected in such legislation and rules, as well as in rate proceedings relating to any incremental cost.

Issue 95-1 The definition of qualifying renewable resources should specifically include existing and new renewable energy generating facilities (*e.g.*, landfill gas) that meet the definition of renewable energy resources in the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997 (20 ILCS 687/6-3).

Adopting a mandatory RPS will require legislative change and, most likely, implementing regulations. This feature should be reflected in such legislation and rules.

Issue 96-1 Utilities, full requirements suppliers acting on their behalf, and RESs may demonstrate compliance with an RPS through ownership of renewable energy certificates issued by renewable energy generators that qualify per any RPS standard in Illinois.

Adopting a mandatory RPS will require legislative change and, most likely, implementing regulations. This feature should be reflected in such legislation and rules.

OGC Comment to Items 94-1, 95-1, and 96-1: Legislation would be necessary to establish a mandatory Renewable Portfolio Standard for utilities and their customers. See also Item 38-12 (discussion of Procurement Scenario 12).

III. Implementation Timeline

As noted above, many of the consensus and alternative consensus items will be implemented in rate proceedings to be initiated in sufficient time to be complete prior to the end of the statutory Mandatory Transition Period ("MTP") on January 2, 2007. Legally, then, such proceedings would have to be filed no later than February 1, 2006. However, such a legally sufficient filing would not permit the market and customers adequate time to react appropriately to the new rates and, in the case of competitive or planned procurement methods, would not provide sufficient time to implement the procurement methodology. Therefore, while the RWG did not reach consensus on a "deadline" for filing, it was the sense of the Group that utilities seeking to implement a Procurement Scenario in whole or in part through a rate filing, should file such proceedings no later than the summer of 2005. Utilities seeking to implement other tariff changes related to RWG consensus items should make such filings, as noted above, in sufficient time for them to be effective as of the end of the MTP or, if applicable, to accommodate the proposed Procurement Scenario.

OGC Comment: The deadline of February 1, 2006, for ratemaking proceedings allows a period of 11 months before the scheduled end of the mandatory transition period. That length of time is derived from Section 9--201 of the Public Utilities Act, which prescribes the sequential periods during which proposed rates may be suspended.

With respect to those consensus and alternative consensus items that require statutory amendment or the adoption of new or amended regulations, the RWG also did not reach a consensus on a "deadline" date. However, it was the sense of the Group that (a) to the extent such changes in Commission regulations had to be in force prior to the filing of utility rate proposals, they should be completed and effective no later than early summer 2005, and (b) to the extent that they can be implemented independently of utility rate filings, they should be completed and effective no later than the summer of 2006, if they are intended to be implemented as of the end of the MTP.

OGC Comment: The timetable for rulemaking is established by the Illinois Administrative Procedure Act, which requires a number of steps before agency rules may take effect. See generally 5 ILCS 100/5--5 through 5--165.

Competitive Issues Working Group Implementation Report

Attachment: Additional comments by: Ms. Arlene Juracek

Attachment: Additional comments by: Mr. Eric Robertson

Attachment: Additional comments by: Mr. Pat Giordano

DRAFT

ILLINOIS COMMERCE COMMISSION POST-2006 INITIATIVE COMPETITIVE ISSUES WORKING GROUP IMPLEMENTATION REPORT SEPTEMBER 2004

OGC Note: Most of the Office of General Counsel's review of the issues addressed by the Competitive Issues Working Group (CIWG) was directed toward the Near Final Draft of the CIWG Implementation Report, which largely forms the basis for the text reflected below. OGC received a subsequent version of the report, which indicated that while the Convener of CIWG consulted with CIWG participants and circulated drafts of the Implementation Report, the Implementation Report should be regarded as merely the convener's best effort and not a report of the CIWG itself. OGC also received three sets of comments addressing a number of the points made below, which comments confirm the lack of consensus on some of these items. The comments are reflected in attachments to this document. Failure to mention a specific comment should not be taken as a statement, positive or negative, on the substance of the comment. All conveners and participants in the working groups are to be commended for the level of effort that went into the process.

I. Description of The CIWG's Approach on Implementation

The CIWG reached consensus on a number of working propositions and mechanical issues with respect to achieving a better functioning competitive marketplace. The CIWG did not focus on implementation questions except insofar as the questions posed by the Commission implied a specific implementation approach. The Working Principles addressed by the CIWG also may imply an implementation method but were intended mainly as standards for measuring actions.[1]

II. Question Addressed by the CIWG

The CIWG developed a set of deductive "Working Propositions" against which ongoing work of the Commission and others in the Post-2006 Initiative can be measured and that can serve as a guide in answering other questions as they might arise. The CIWG addressed the ICC Final Questions 67-79 directed to the Group. The CIWG also established five Subgroups to address practical

[1] It was here that the final report received on October 25, 2004, stated that the report represents the convener's best effort, as distinguished from being a report of the CIWG itself.

and operational issues relevant to the competitive environment. The Subgroups addressed:

ARES Certification, Licensure and Tariffs;
Billing, EDC Charges, SBO, Timing, Consolidated Billing;
Customer Information and Data Flow;
Switching Process; and
Wholesale and Transmission.

III. Implementation Methods

This Implementation Report follows the presentation format of the CIWG Final Report. Each element below for which an Implementation Method is suggested there will be a brief notation, in **BOLD CAPITAL LETTERS**, usually indicating whether Legislation or a Commission Order or Rule or some combination thereof would appear the most obvious and efficient Implementation Method or whether the recommendation in question is susceptible to some other approach.

A. Working Propositions

The CIWG developed a number of Working Propositions that can serve as deductive principles against which other more specific proposals or Commission action might be measured. The Working Propositions below address areas considered significant for the overall development of Illinois' transition to a competitive electric market.

Integrated Distribution Company (IDC) & Functional Separation Rules

With reference only to the offering of permitted, non-mandatory energy products in their own service territories as set forth by the PUA (16-121, 16-119) and in ICC administrative rules, the current structural options and requirements under IDC and functional separation rules for utilities are sufficiently fair and reasonable as not to require significant change. The CIWG recognizes that there may be a concern that permitted image advertising may cross the line into impermissible marketing, and the ICC should be vigilant in its enforcement of such rules. **VIOLATIONS OF EXISTING RULES CAN BE ADDRESSED IN AN ICC COMPLAINT PROCEEEDING. TO THE EXTENT THAT THERE ARE MATTERS THAT REQUIRE CLARIFICATION CONSISTENT WITH THIS WORKING PROPOSITION THE ICC CAN UNDERTAKE RULEMAKING.**

OGC Comment: OGC agrees that violations of existing rules can be addressed in an ICC complaint proceeding, and that to the extent there are matters that require clarification consistent with this working proposition, the ICC can undertake rulemaking.

Because IDC rules have been interpreted by some in ways that result in difficulty for customers to learn about rates and programs that may be available from utilities, the Commission should clarify that IDC rules allow for utilities to conduct public information programs to promote green power and energy efficiency programs offered by all LSEs (e.g. CT's "Wait 'til 8" program, CA's "Flex Your Power Now" program, etc.) and for the provision of other rate and service information to all customers upon request. **ICC DECLARATORY RULING, ICC RULEMAKING OR ICC COMPLAINT PROCEEDING**.

OGC Comment: This point appears to be consistent with the Commission's rule on declaratory rulings, but anyone wishing to seek such a ruling should consult Section 200.220 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.220) before filing a request.

In the alternative, Section 16-117 of the PUA could be amended to provide for such information programs. **LEGISLATIVE CHANGE TO PUA**.

Management of Customer Migration Risk

The CIWG concurs with the responses of the Rates Working Group (RWG) in its answers to ICC Final Questions 50 & 51. The questions and answers are as follows, as quoted from the report of the RWG:

50) Should rates for customers who return to bundled service be different from the rates offered to basic bundled service customers? Do customers who move back and forth between bundled services and delivery services cause additional costs that should be charged only to those customers?

51) Should customers returning to bundled service be put on time-based rates as their default option, under opt-out conditions?*

A. "These questions each address rate treatment for customers switching to bundled service. The Utility Service Obligations WG has discussed the nature of the utility services available to migrating customers upon their return to utility commodity service in

greater detail. The RWG will consider how the various Scenarios may affect the rate design of the various services that may be offered by utilities to such customers.

“The RWG reached consensus that, under Scenarios 1 and 2, if the switching and volume risk is priced into the RFP or auction bid and borne by the wholesale suppliers in an undifferentiated manner, then there is no need for commodity charges to customers returning to "bundled" service to differ from those applicable to customers who have never left "bundled" service. Moreover, under procurement Scenarios where the risks and costs of migration are built into the bid price in an undifferentiated manner, retail customers should be able to come to and go from the standard offer service (i.e., the "bundled" rate applicable to their class). The RWG notes that the switching rules must be known by and consistent with the terms of the auction and/or RFP bids.

“The RWG further reached consensus that other procurement Scenarios where the risks and costs of the migration of customers able to return to the standard offer service (i.e., the "bundled" rate applicable to their class) are not built into undifferentiated supply bid prices (e.g., vertical integration, an RFP with explicitly higher costs for intra-period returning customers, traditional cost-of-service models) may include rates under which returning customers pay commodity charges reflecting the incremental cost, if any, of their return to utility commodity service. Those costs may be recovered by utilities from such customers through mechanisms which recover these incremental costs from such returning customers. A minimum stay period may also be utilized to mitigate the level of such incremental costs, which period may be coupled with a cost-based charge for early termination. Recovery of incremental commodity costs incurred by reason of the option to return, prior to the exercise of that right, is addressed in an earlier consensus item; as noted, the RWG did not reach consensus on whether such costs can properly be assigned to other customers.

* “The RWG is uncertain as to the meaning of the phrase "under opt-out conditions" included in Issue 51, and the author of the Issue was not available to the RWG for clarification. The RWG, however, believes that a reasonable response to the core issue can be provided jointly with Issue 50.”

THERE MAY WELL BE DIVERGENT VIEWS ON THE MOST APPROPRIATE MEANS OF ADDRESSING CUSTOMER MIGRATION ISSUES CONSISTENT WITH THIS WORKING PROPOSITION ADOPTING THE RWG’s ANSWERS TO QUESTIONS 50 & 51. PROCEEDINGS ASSOCIATED WITH ICC

APPROVAL OF A SUPPLY ACQUISITION METHOD WILL DETERMINE WHAT COMBINATION OF ICC RULEMAKING OR ORDERS APPROVING TARIFFS WOULD BE APPROPRIATE. MATTERS RELATED MINIMUM-STAY REQUIREMENTS OR TO THE BUY-OUT OF SUCH REQUIREMENTS MAY IMPLY LEGISLATIVE CHANGES.

Renewable Portfolio Standards

If any Illinois Renewable Portfolio Standards (RPS) measure is adopted it should be competitively neutral and applied equitably to electric utilities (as defined in Section 16-102 of the Act), any Basic Generation Service auction winners or other full requirements electric suppliers serving some or all of a utility's load serving obligation, as appropriate, and ARES (as defined in Section 16-102). An appropriate mechanism for efficient compliance is a system of tradable "green tags" associated with renewable energy facilities that satisfy the RPS requirements. Development and use of an exchange through which such facilities may sell such tags and through which electric utilities, their full requirements electric suppliers, and RES may buy such tags may facilitate use of this mechanism. Subpart E ARES established pursuant to 83 Illinois Administrative Code Part 451, self generators, and cogenerators should not be subject to RPS requirements. **THE CIWG OPERATED ON THE BASIS THAT RPS STANDARDS MIGHT BE A LEGISLATIVE MATTER AND THAT SUCH OPERATIONAL MATTERS AS A "GREEN TAGS" PROGRAM WOULD BE HANDLED THROUGH ICC RULEMAKING OR ICC APPROVALS OF UTILLITY TARIFFS**.

OGC Comment: If a "renewable portfolio standard" is an enforceable requirement that those procuring electricity for sale in the retail market must include some specific percentage of electric capacity or energy from one or more specific types of generation using renewable energy sources, as defined in the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997 (20 ILCS 687/6-3), or otherwise, OGC understands how the CIWG could have operated on the basis that this is a legislative matter.

Aggregation & Voluntary Grouping of Customers

1) An aggregator of customers on a voluntary basis for the purpose of purchasing electric power and energy that does not itself offer electric power and energy for sale should not be considered an ARES pursuant to Section 16-102 of the Act. **MAY REQUIRE LEGISLATIVE CHANGES DUE TO THE DEFINITION OF ARES**

IN THE PUA. ALTERNATIVELY, THE ICC HAS EXISTING AUTHORITY TO ADOPT RULES REGARDING AGGREGATION UNDER SECTION 16-104(b) OF THE PUA.

OGC Comment: The Section 16-102 definition of "alternative retail electric supplier" applies, in the primary statement of the meaning of the term, only to entities that offer electric power and energy to retail customers, or that deliver or furnish electricity to retail customers. The definition then goes on to "include, without limitation, . . . resellers". If the consensus of this working group is that the law should unequivocally exclude from the definition of ARES those aggregators that do not themselves offer electric power and energy for sale (and that do not themselves deliver or furnish electricity to retail customers), then an amendment to Section 16-102 would appear to be in order.

While OGC does not typically argue for more limited readings of statutes conferring authority on the Commission, our view is that a fair reading of Section 16-104(b) authorizes the adoption of rules applicable to electric utilities that specify circumstances under which the loads of different customers may be aggregated, but does not necessarily authorize the adoption of rules under which the Commission expands or contracts the universe of aggregators who can do business without being certificated as ARES.

2) To the extent that the energy components of rates for utility bundled services are primarily a function of competitive supply acquisition, it is likely that "opt-out" aggregation through local government will not be of additional value. ("Opt-in" municipal aggregation already exists as a service opportunity.) **OPT-OUT AGGREGATION WOULD REQUIRE LEGISLATIVE CHANGES.**

OGC Comment: OGC does not view "opt-out" aggregation as consistent with Section 16-115A(b) of the PUA and with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2EE), and thus agrees.

THIS RECOMMENDATION DOES NOT CONTEMPLATE ANY SUCH CHANGES. OPT-IN AGGREGATION WOULD NOT NECESSARILY REQUIRE NEW RULES OR TARIFFS.

OGC Comment: Section 16-104(b) requires electric utilities to allow aggregation consistent with criteria established by those responsible for the integrity and reliability of the transmission system, and authorizes the Commission to adopt rules governing criteria for aggregation. Thus, either rulemaking or tariff changes would appear to be appropriate ways to make any eligibility changes deemed necessary or appropriate for "opt-in" aggregation.

3) The voluntary grouping of customers for purposes of energy purchases should not be unnecessarily inhibited by utility delivery

services tariffs, rules and practices in areas such as synchronization of meter reading cycles and requirements for common ownership. The costs of reasonable accommodations for such aggregation programs should be borne by the cost causers. **ICC ORDERS ADOPTING TARIFF REVISIONS**.

OGC Comment: OGC agrees that this issue can be addressed by ICC orders adopting tariff revisions.

4) At this time there is not sufficient indication of a need for regulation or licensure of parties organizing customers for the purpose of purchasing energy supply beyond existing commercial law in Illinois.

Demand Response/Curtailment

The integration of ComEd into PJM and the expected integration of Downstate utilities into MISO present new opportunities for customer participation in demand response programs operated by RTOs, Load Serving Entities (including RESs and utilities), and Curtailment Service Providers (CSP). Utility tariffs, rules and business practices should facilitate, promote or provide, as appropriate, for participation in such programs by both bundled and unbundled service customers irrespective of the supply acquisition methods approved by the ICC. **MAY BE FACILITATED OR GOVERNED BY ICC ADOPTION OF UTILITY TARIFFS AND SUBSEQUENT ENFORCEMENT. FURTHER, ICC ADVOCACY OF DEMAND RESPONSE PROGRAMS THROUGH RTO ACTION MAY BE DESIRABLE**.

OGC Comment: Without advocating a specific approach, OGC notes that the advent of so-called “curtailment service providers” implicates public policy issues similar to those to which the report alludes with respect to aggregators in item (4) of the Aggregation section, above. In other words, policymakers may wish to consider from time to time whether there is “a need for regulation or licensure of parties” who sell “curtailment service” to the public.

Competitive Declaration

The CIWG did not achieve consensus on the matter of the Competitive Declaration process. Therefore, the CIWG presents below a distillation of the various viewpoints and related commentary offered by some parties in support of those viewpoints that emerged during the Group’s discussions.

Viewpoint 1: The competitive declaration process should continue in a manner consistent with the standards for review articulated by the Commission in its order in the single competitive declaration thus far reviewed. **PUA CHANGES NOT REQUIRED**

Commentary: Initially, it is important to recognize that this issue concerns only large commercial and industrial customers; under the PUA, utilities retain an obligation to provide power and energy to all residential customers and to small businesses.

OGC Comment: While Section 16-103(c) makes clear that electric utilities maintain an ongoing obligation to offer bundled service to all residential and small commercial customers, it does contemplate the possibility of a declaration of the provision of electric power and energy service to such customers to be competitive. If such a declaration occurs, electric utilities are to price bundled service options at rates which reflect the recovery of all cost components for providing such service, as set forth in Section 16-103(b). It should thus be pointed out that the possibility of a competitive declaration for small customers can affect the tariffed pricing mechanism (and therefore the price of electric power and energy) for these customer classes.

The Customer Choice Act of 1997 is premised on a transition to competitive markets and removal of regulated mandated services when markets can appropriately provide the services customers seek. Furthermore, competitive markets are advanced for all customer segments when competitive conditions in individual customer segments are recognized, after careful consideration, rather than waiting for other segments to "catch up". In fact, the entire transition to customer choice, which was phased in over a multi-year period by customer class, starting with the largest customers first, recognized a natural progression from large, lower transaction cost customers, to smaller, higher transaction customers as markets develop. The customer switching numbers in parts of Illinois have borne out this natural progression expectation.

Thus far, one request by a utility for a competitive declaration for service to its largest customers has been allowed to become effective "under operation of law." The Commission's process in considering that declaration request demonstrates that the competitive declaration process can be carefully administered and should continue. In addition, the process urged by various parties expressing concerns and being utilized by the Commission permits the Commission to continue to monitor market conditions after a declaration is allowed to take effect so it can take appropriate

actions if the market falters. Finally, all signs are that the market is working well for the customers whose service has been declared competitive and the Commission has not received requests at this point to take any corrective action on the basis of any demonstration of problems with the market. Thus, the existing standards for a competitive declaration are adequate, provide the Commission with sufficient flexibility, and contribute through their implementation to the continued improvement in competitive conditions. They should be maintained. Removal of this provision from the carefully thought out and comprehensive electric restructuring act of 1997 will substantively un-do what the General Assembly set out to do.

Viewpoint 2: The competitive declaration process should be continued only if the standards for declarations are modified to assure the existence of an effectively competitive market for affected services and customers – one with prices constrained by competitive forces, etc. – before the option of a cost-based service is eliminated. **THIS WOULD LIKELY REQUIRE REVISIONS TO PUA SECTION 16-113 TO INCLUDE MORE SPECIFIC CRITERIA TO BE CONSIDERED BY THE ICC IN DECIDING WHETHER TO PERMIT A COMPETITIVE DECLARATION TO TAKE EFFECT**.

Commentary: The current statutory criteria and the Commission's application of them do not assure that reasonably equivalent services, at comparable prices that are effectively constrained by market forces, actually are provided by the markets in which customers of services declared competitive are compelled to seek substitute services. Moreover, the statutory criteria do not require a finding that the market conditions on which the Commission relies in approving a declaration are sustainable and likely to persist.

New, more stringent criteria are needed. The competitive declaration criteria, and the Commission's process for assessing competitive declaration requests, should assure that customers will not be forced to take different, less satisfactory services or to pay prices that are inflated by exercises of market power. The current criteria are not adequate to that task.

OGC Comment: The statute and the Commission's Order in Docket No. 02-0479 speak for themselves.

Viewpoint 3: The competitive declaration process should only be continued if markets provide consumers with electricity supply at prices that are effectively constrained by market forces and if competitive electricity suppliers that are willing, otherwise qualified

and able to serve customers are not unfairly barred from doing so. **TWO AREAS FOR POTENTIAL LEGISLATIVE CHANGE ARE: (1) SECTION 16-113 OF THE PUA TO INCLUDE MORE SPECIFIC CRITERIA TO BE CONSIDERED BY THE ICC IN DECIDING WHETHER TO PERMIT A COMPETITIVE DECLARATION TO TAKE EFFECT; (2) THE RECIPROCITY CLAUSE IN SECTION 16-115(d)(5) MIGHT BE REVISED OR REPEALED**.

Commentary: It was established in these workshops that many otherwise qualified competitive suppliers are not currently eligible for certification in Illinois as a result of the reciprocity clause in the current PUA. Therefore, current competitive declarations must be voided and utilities must be required to provide stably priced bundled services to all consumers unless the reciprocity clause is eliminated or substantially modified to lessen this major barrier to entry of qualified competitive suppliers into the Illinois market.

OGC Comment: The statute and the Commission's Order in Docket No. 02-0479 speak for themselves, as do the opinion of the Appellate Court in IBEW v. Illinois Commerce Commission, 331 Ill. App. 3rd 607 (Fifth District, 2002), and the Commission's Orders construing Section 16-115(d)(5) since June 2002.

Reporting Requirements

Current reporting requirements for all Illinois LSEs should be reviewed for their usefulness and modified or supplemented as needed. **LEGISLATIVE CHANGES DO NOT APPEAR TO BE IN ORDER BUT THE ICC MAY CHOOSE TO MODIFY ITS RULES.**

B. ICC Final Questions (67-79)

The CIWG was assigned ICC Final Questions 67-79 that were aggregated under the Competitive Issues section of the Final Questions Paper. The CIWG's answers to the assigned Questions are presented in numerical order.

67) What measures should the Commission undertake to encourage competition for smaller-use customers? To what extent, if at all, must the rates for non-competitive tariffed energy services to such customers be increased to permit such competition?

Full consensus was not achieved with respect to #67, for which dissenting or alternative points of view are presented.

Presented immediately below as Option A is the formulation to which most participants agreed upon as a general principle. Option B is a formulation and commentary submitted as a variation on Option A. Option C is a formulation submitted as an alternative view but that need not be inconsistent with the formulation in Option A.

Option A: The ICC should never increase prices to customers solely to promote customer switching. The Commission should accommodate competitive choice by residential and small commercial customers by assuring: **THE FOLLOWING ELEMENTS ARE SUSCEPTIBLE TO VARIOUS COMBINATIONS OF LAW, RULE, ORDER AND/OR TRAIFF**.

- maximum practicable freedom of migration away from and back to utility service, while avoiding shifting costs to non-migrating customers; **LAW/RULE/ORDER/TARIFF**
- avoidance of punitive exit or return conditions; **RULE/ORDER/TARIFF**
- maximum practicable opportunity for aggregation of such customers and load, including reasonable opportunities for aggregation within multi-tenant buildings; **LAW/RULE/ORDER/TARIFF**
- reliance on market based pricing for utility provided energy services that will obviate any need for headroom adders; **ORDER/TARIFF** and
- disaggregation of rate elements to facilitate comparison shopping; **ORDER/TARIFF**

OGC Comment: The word "solely," as used in the first portion of this response, carries with it an implication that prices to customers may be allowed to rise for reasons that include, but are not limited to, spurring competitive entry.

Option B: The Commission should never permit rates for non-competitive tariffed energy services for smaller-use customers to be increased just to enable competitive entry. In other words, no form of "Let's get prices up so that we can have 'competition'" is acceptable. **ORDER/TARIFF**

Commentary: Only a clear understanding and implementation of that policy can prevent a push to "market based" pricing to enable competitive entry, even when prices from any prospective suppliers exceed existing service rates. Artificial competition based on artificially increased rates can deliver none of the equitable and

timely price benefits for consumers the Act contemplates. *See § 16-101A(e) of the Act.*

"Competition" that requires such subsidies is not sustainable, effective competition that can deliver "in an equitable and timely fashion . . . lower costs for electricity." The mere possibility of future benefits does not nullify or justify the current economic harm to consumers. And "choice" alone does not satisfy the statutory standard for consumer benefits. The ability to choose among inferior or higher priced services is neither a meaningful choice nor a real benefit for consumers. The effect is a price increase -- for the benefit of potential market entrants.

Potential market entrants seeking subsidies for their entry should not seek to impose a hidden tax on consumers of an essential service. As in other competitive markets, commercial enterprises wishing to participate in a market – not consumers -- should shoulder the risks and costs of their market entry and market development.

As recognized in one of the principles adopted by the working group, the Act's goal is not competition for competition's sake, but just and reasonable prices, which may be achieved through competition.

Option C: In order for competitive markets to be robust and sustainable, the initial default price must be set at a level that does not impose barriers to new market entry. In addition, subsequent adjustments to the default price must be allowed to reflect changing market conditions over time. Should the initial default price, established through a transparent mechanism, fall short of being conducive to new market entry, the Commission should consider adjusting the initial default price. Such an adjustment will prevent competitive market failure. Nothing should prohibit the Commission from adopting and advocating a market design that brings the benefits of a long-term, robust sustainable competitive market to customers. **WHILE THERE MAY BE SOMEWHAT DIFFERING VIEWS AS TO EMPHASIS ON THE MOST APT MEANS OF ADDRESSING OPTIONS A & B ABOVE, THERE ARE LIKELY SHARPER DIFFERENCES WITH RESPECT TO OPTION C, WITH SOME VIEWING LAW CHANGES AS NECESSARY AND OTHERS SEEING THIS AREA AS SUSCEPTIBLE TO ICC DECISIONS IN THE CONTEXT OF RATE AND TARRIFF ORDERS.**

OGC Comment: It is difficult to reconcile the Option C recommendation that the Commission "consider adjusting the initial default price" to "prevent competitive market failure" with the first sentence of Option A: "The ICC should never increase prices to customers solely to promote customer switching." Further, C contemplates the possibility of a price greater than market. It is possible therefore that option C could result in a price that would exceed the current market price plus 10% statutory restriction. If C were to be employed, a statutory amendment may be necessary.

68) What measures should the Commission undertake to encourage competition in the service areas of the State's smallest utilities?

A. In order to better provide customers of small utilities in Illinois with opportunity for competitive choice, small utilities should adopt relevant practices, rules and tariffs that are comparable to those of the large utilities close by, surrounding them or in the same control area or RTO. **ORDER/TARIFF.**

OGC Comment: OGC agrees that the Commission may consider ordering tariff revisions.

69) What role could municipal aggregation programs play in encouraging retail competition for smaller-use customers?

A. If competitive supply acquisition methods are adopted and/or the Commission and utilities remove barriers to competitive choice identified in the Post-2006 process, there would appear to be little need or role for municipal aggregation. For further comment please see the Working Proposition on Aggregation & Voluntary Grouping of Customers. **TO THE EXTENT THAT THE DEFINITION OF "ARES" MIGHT BE INVOVLED IN THIS AREA, CHANGES MIGHT BE NEEDED TO THE PUA. ALTERNATIVELY, THE ICC HAS RELEVANT AUTHORITY TO ADOPT RULES REGARDING AGGREGATION UNDER SECTION 16-104(b) OF THE PUA.**

OGC Comment: As stated above, our view is that a fair reading of Section 16-104(b) authorizes the adoption of rules applicable to electric utilities that specify circumstances under which the loads of different customers may be aggregated, but not necessarily the adoption of rules under which the Commission expands or contracts the universe of aggregators who can do business without being certificated as ARES.

70) What barriers to participation in the market can and should be removed?

A. Various Subgroups addressed the barriers issue. Please see the attached Subgroup reports.
LAW/RULE/TARIFF/ORDER/UTILITY BUSINESS PRACTICES.

71) Should regulations regarding codes of conduct and utility-affiliate activities be modified?

A. CIWG did not fully address issues presented in #71 beyond matters substantively subsumed under the Working Proposition on IDC/Functional Separation Rules. **ICC RULEMAKING.**

OGC Comment: OGC agrees that the Commission may consider changes to its rules concerning codes of conduct.

72) How will the Commission address the special cost allocation and affiliated interest problems that accompany a utility with joint costs for regulated and unregulated activities?

A. To the extent that bundled rates for utilities without generation are set on the basis of cost-based delivery services rates applicable to both choice and bundled customers to which energy prices are added, then the problem of joint costs should be minimal. In the case of utilities that retain rate-based generation for inclusion in bundled rates, the Commission should require that rate setting information be supplied such that the Commission will have the ability to set delivery service rates that are applicable for both bundled rates and delivery services. **AS ALSO DISCUSSED BY THE RWG, ICC ORDERS AND RULEMAKING ARE THE MOST APT MEANS OF ADDRESSING THESE ISSUES.**

OGC Comment: OGC agrees that the Commission may address cost allocation and affiliated interest issues through rulemaking.

73) What further progress can be made towards uniform tariffs?

A. Various working groups are addressing the issue of uniform tariffs, rules and practices. **ICC RULEMAKING AND ICC ORDERS APPROVING TARIFFS, ESPECIALLY AS INFOMRED BY THE STAKEHOLDER WORKSHOP PROCESS, ARE THE MOST LIKLEY MEANS OF ADDRESSING SUCH ISSUES**.

OGC Comment: OGC agrees that rulemaking and ratemaking orders are an appropriate means to address uniformity issues.

74) Are there specific actions the Commission can take, either through the FERC or other national or regional forums, to improve the competitiveness of the Illinois wholesale market, either through improvements in transmission availability or through better market design?

A. The Commission can be especially influential at FERC and with RTOs (PJM and MISO) in assuring that wholesale rules and practices are consistent with Illinois' policy of accommodating customer choice while simultaneously ensuring the protection of Illinois customers. The report of the CIWG Wholesale & Transmission Subgroup is a primary basis for the answer below. The Commission should give special consideration to the following important issues:

(a) monitoring of areas in Illinois where ownership of generating capacity is highly concentrated to ensure that the increased competitiveness of those markets that is anticipated by AEP's entry into PJM actually occurs;
(b) supporting PJM's efforts to revise its capacity construct to assure better overall system reliability and encouraging MISO to adopt a similar capacity construct;
(c) monitoring the application and hedging of congestion costs in Illinois control areas subject to Locational Marginal Pricing (LMP) and Financial Transmission Rights (FTR) to determine if policy changes are needed to protect consumers from unhedged congestion costs;
(d) eliminating seams issues affecting the Illinois competitive market between control areas and between RTOs;
(e) creation of a functioning joint and common PJM/MISO market;
(f) appropriate transmission rate designs which do not result in inequitable or inappropriate cost shifts to Illinois consumers;
(g) development of a standardized, low cost set of interconnection rules and procedures for the interconnection and operation of small (less than 20 MW) Distributed Generation; **ICC RULES AND ORDERS.**
(h) resource adequacy rules; **MAY BE AT LEAST PARTLY ADDRESSED IN THE CONTEXT OF THE ICC OR LEGISLATIVE PROCESSES ASSICATED WITH DETERMINING A UTILITY SUPPLY ACQUSITION MECHANISM.**
(i) the conditions of obtaining Network Integration Service; and
(j) pricing of Imbalance and other Ancillary Services.

THESE MATTERS SHOULD MAINLY BE ADDRESSED BY MEANS OF ICC ADVOCACY AND PARTICIPATION AT FERC AND RTOs WITH ATTENTION TO AREAS IN WHICH THE EXERCISE OF ICC AUTHORITY MAY FACILITATE THE ELIMINATION OF RTO SEAMS.

OGC Comment: OGC agrees that advocacy before the FERC is an important means of addressing transmission and wholesale market issues.

75) Is providing competitively priced wholesale power for small-use customers enough to meet the "benefits" and "equity" directive in the '97 Law? (Rather than focusing on retail competition)

A. Basing utility supplied power and energy to residential and small commercial customers on market pricing should be considered as one way of providing the benefits from a competitive market to those customers. The method of supply acquisition by the utility will be a key factor to consider. It should also be understood that utility energy supply will tend to focus mainly on a basic service price while innovation in pricing and related utility provided services will likely be found mainly through competitive choice for such customers.

76) Should retail competition be encouraged if bundled use customers reap benefits through wholesale competition?

A. Competition in both the wholesale and retail market segments should be encouraged as complementary and effective competition in both arenas will deliver value to customers.

77) Should the regulatory regime create rules for LDC's to provide competitively priced power to individual customers?

A. See #75. Procurement methods by utilities will be a key factor determining whether LDCs provide competitive priced power and energy. The scope of this function and the customers to whom LDCs should provide such services will be addressed by other Working Groups.

78) How should residential choice be addressed (including to a certain degree whether true "choice" itself at the residential level is an appropriate goal)?

A. Within the context of the overriding goal of the PUA to achieve just and reasonable rates, the opportunity for residential and small commercial competitive choice can be advanced by identifying and removing barriers to choice, minimizing transaction costs, providing for accurate, transparent utility pricing and reducing regulatory uncertainty. **DEPENDING UPON THE PARTICULAR BARRIERS IDENTIFIED REUIRED ACTION WOULD INCLUDE LEGISLTIVE CHANGES, ICC RULEMAKING, ICC ORDER AND UTILITY TARIFFS**.

79) What are the barriers to competitive providers providing demand response programs and/or dynamic pricing offers and what can FERC and/or the Commission do to address such?

A. The Commission should focus on encouraging the development of effective Demand Response programs in RTOs and assuring that utility tariffs, rules and practices do not erect barriers to customer participation in DR programs offered by Load Serving Entities and/or RTOs. See further the Working Proposition on Demand Response/Curtailment. **THE MOST DIRECT MEANS OF ADDRESSING SUCH ISSUES ARE THROUGH ICC RULEMAKING OR ICC ORDERS AND UTILITY TARIFFS THAT ARE COORDINATED WITH RTO PROGRAMS AND THE ACTIVE PARTICPATION OF STAKEHOLDERS IN RTO PROCESSES.**

OGC Comment: The source of ICC rulemaking authority to address demand response programs, per se, is not immediately apparent. To the degree this answer relies upon Article IX and Article XVI authority to take steps necessary to achieve the goals and directives of those Articles including ratemaking orders (and possibly rulemaking, depending on the nature of the issues raised), OGC agrees.

C. Subgroups

The CIWG established five Subgroups to address highly specific, practical operational issues having implications for the competitive environment. The Subgroups, to varying degrees, were able to identify specific issues and to arrive at agreed-upon solutions to perceived problems or for needed changes upon the end of the Transition. For detailed information beyond that presented below please consult the Subgroup reports and presentations in the attachments.

ARES Certification, Licensure and Tariffs Subgroup

The ARES Subgroup had extensive discussions regarding the specifics of ICC Rule Part 451, ARES reporting requirements, EDC registration requirements for ARES, reciprocity requirements and certain other issues.

The subgroup achieved consensus on a number of changes to Part 451 or its application that are outlined in the subgroup's final report along with certain other elements of Part 451 for which consensus was not achieved. **SPECIFIC PROPOSED REVISIONS TO PART 451 ARE INCLUDED IN THE SUBGROUP REPORT**

OGC Comment: From a review of the Subgroup Report, OGC agrees that the issues addressed could be considered by the Commission in a rulemaking proceeding.

The subgroup agreed that at this time changes were not needed for current ARES reporting requirements and that the ICC website should be more frequently updated with ARES contact information.

The subgroup reached consensus that, whenever possible and from which benefits may be derived, an aspiration for greater uniformity of terms in RES agreements across utility service territories was desirable. **IF DEEMED NECESSARY BY THE ICC RULEMAKING OR ICC ORDERS WOULD BE A PROPER MEANS OF ADDRESSING THESE ISSUES**.

OGC Comment: OGC agrees that ICC orders, and rules if deemed appropriate by the Commission, would be a proper means of addressing these issues.

While consensus was not achieved with respect to the reciprocity requirements, the subgroup has provided a detailed review of the differing points of view and possible approaches to resolving current ambiguities. **LEGISLATIVE CHANGES MIGHT BE REQUIRED FOR PURPOSES OF ANY ADDITIONAL EFFORTS TO CLARIFY OR OTHERWISE REVISE THE RECIPROCITY CLAUSE**.

OGC Comment: The CIWG and the ARES Certification, Licensure, and Tariffs Subgroup are to be commended for thoroughly pursuing the reciprocity issue. It is hoped that through a continuation of such forthright communications, consensus might ultimately be reached as to how this issue should be addressed.

Billing, EDC Charges, SBO, Timing, Consolidated Billing Subgroup

The Billing Subgroup, while not developing specific solutions, was able to identify a set of issues associated with the information flow and financial

arrangements between EDCs and RES/ARES with respect to billing. These included:

- bill formatting;
- spilt billing for gas and electric service in dual utility areas;
- billing agency;
- SBO requirements;
- EDC payment terms for SBO;
- SBO report coordination with 820 data & ACH receipts;
- Timing of 867 & 810 reports;
- Coordination of Interim Supply with customers going on SBO;
- refund processes for RES overpayments to EDCs;
- eligibility of customers with prior balances;
- prior balance collections responsibilities.

The Subgroup recognized that certain issues related to their considerations, including uniformity, were being addressed in the Customer Information Subgroup and other elements of the post-2006 process. **ICC RULEMAKING OR ICC ORDERS AND UTILITY COULD BE USED TO ADDRESS THESE ISSUES IN THE ABSENCE OF AGREEMENT AMONG UTILITIES AND (A)RES IN FURTHER STAKEHOLDER WORKSHOPS. IT IS POSSBILE THAT LAW CHANGES TO SBO PROVISIONS MIGHT BE IN ORDER.**

Customer Information & Data Flow Subgroup

The objective for this Subgroup was to identify business transactions and specific data fields required to facilitate retail competition with specific emphasis on better enabling consumers to choose between alternative supply options without undue hardship.

Subgroup participants generally agreed that all market participants (presuming appropriate legal authorization) must have equal access to all relevant pricing determinants utilized by the incumbent public utility for its tariffed services. Access to this information permits the consumer to have access to relevant and necessary information which enables the consumer to make an informed choice regarding their power and energy needs.

Two categories of data detail were identified as necessary for the efficient transfer of data among and between market participants post 2006: (1) Data Transactions for Retail Pricing and (2) Data Transaction for Retail Switching and Consumer Billing. While to date most participants agreed that much of the detail is being provided; there is no consistency or uniformity in the type of data or form of data being transacted today.

The Subgroup concluded after just a few very productive meetings that the best way to improve data business transaction for the Post 2006 era would be through the development of a centralized forum to effectuate change in how data flows among and between market participants in the future. As more finely detailed in the CIWG Subgroup Report on "Customer Information and Data Flow"; the Subgroup recommends the ICC facilitate such a centralized forum for an on-going working group to deal with data transaction issues as they arise and that public utilities be permitted to recover expenses for continued implementation and maintenance of systems that continue to permit customers access to all available supply options offered Post-2006.

Representatives participating in this Subgroup included representatives from both utility business policy departments and IT departments; energy consultants, customer representatives, and competitive retail electric suppliers. **TO THE EXTENT THAT UTILITIES AND (A)RES COULD NOT AGREE ON THESE ISSUES ICC RULEMAKING AND ICC ORDERS AND UTILITY TARIFFS COULD BE PROPER MEANS OF ADDRESSING THESE ISSUES**.

OGC Comment: OGC agrees that ICC rulemaking and orders on tariff issues could be proper means of addressing these issues.

Switching Process Subgroup

The main focus of the Switching Process Subgroup was on the identification of issues associated with the exercise of choice by residential and small commercial customers in the post-2006 period. The subgroup recommended a two-pronged customer education effort that would rely on an internet website providing information on a full range of electric choice issues relating to residential and small commercial customers and a request based system by which utilities would provide printed materials to assist and educate such customers. The subgroup identified several areas in which helpful cross-references between the ARES Certification Rule and such Illinois Statutes as the Consumer Fraud and Deceptive Practices Act should be made. The subgroup further urged that as the residential and small commercial markets develop, attention be given to the specific issues of "mass switching" should problems arise for utilities and RESs in connection with processing switches for large volumes of customers, many of whom may not be sophisticated "shoppers". . The subgroup discussed but did not resolve issues associated with suggested rule changes directed at return of deposit and billing dispute procedures for RES/ARES.

With respect to larger commercial customers, the subgroup discussed but did not resolve a discussion of problems associated with the manual

processing of agency agreements. The subgroup also suggested that at some future time the Commission may wish to consider reviewing "agency" issues in connection with PPO service offerings once threshold procurement issues had been resolved.

TO THE EXTENT THAT UTILITIES AND (A)RES COULD NOT AGREE ON THESE ISSUES ICC RULEMAKING AND ICC ORDERS AND UTILITY TARIFFS COULD BE PROPER MEANS OF ADDRESSING THESE ISSUES.

OGC Comment: OGC agrees that ICC rulemaking and orders on tariff issues could be proper means of addressing these issues.

Wholesale & Transmission Subgroup

The Wholesale & Transmission Subgroup addressed specific topics in three broad categories as related to the development of retail customer choice: the impact of RTO/OATT development, wholesale competition, and the "wheeling" of power in and out of Illinois. The subgroup reached consensus that the reliance on approaches new to Illinois, such as integration of utilities into PJM and MISO, locational marginal pricing (LMP) and Financial Transmission Rights (FTRs) require careful ongoing monitoring to assure the delivery of intended competitive market benefits.

The subgroup supported the scheduled integration of AEP into PJM because it should make the capacity market more competitive, the development of demand-side management to reduce capacity costs and appropriate compensation mechanisms for generating plant operational characteristics that contribute to reliability. The subgroup also noted that the movement to LMP should encourage the construction of generation and transmission capacity where needed but urged the careful monitoring of its use, results and implications, and endorsed the allocation of Financial Transmission Rights (FTR) so as to maximize the consumer benefit of hedging against congestion risk.

Finally, the subgroup agreed that transmission rate design in PJM and MISO should avoid allocating unfair cost burdens to Illinois consumers, that seams issues be fully addressed, that there should be uniform interconnection rules that accommodate distributed generation, and that there should be utility rates available that recognize, to the extent practicable, the value of distributed generation to the system. **THESE ISSUES ARE PRIMARILY, BUT NOT NECESSARILY EXCLUSIVELY, MATTERS SUSCEPTIBLE TO BEING ADDRESSED THROUGH ICC ADVOCACY AND PARTICIPATION AT FERC AND RTOs**.

OGC Note: The following are comments from Arlene Juracek on behalf of ComEd.

The implementation language added to the answer to (69) seems to be off topic, as it appears to address other forms of aggregation, not the municipal aggregation focus of the question. Suggest we rely on the working proposition implementation language referred to.

Question 74 addresses action the Commission could take through FERC or regional or national forums, to improve the wholesale market. The implementation language of Part (h) on resource adequacy seems to suggest action beyond the ICC's authority. A compromise statement follows:
"Parties agree that this should be addressed through participation in RTO processes and at the FERC. Some parties have also suggested that this concern may at least partly be addressed in the context of the ICC or legislative processes associated with a utility supply acquisition mechanism, but there was substantial disagreement on this point."

The answer to 74(j) implies that the ICC has the authority to eliminate RTO seams. We suggest that this answer be modified as follows:

"...with attention to areas in which the exercise of ICC authority may **encourage** (rather than facilitate) the elimination of RTO seams."

Thanks for the fine effort in co-coordinating all the various viewpoints.

OGC Note: The following are comments from Eric Robertson.

DRAFT *COMMENTS Oct 13*

ILLINOIS COMMERCE COMMISSION POST-2006 INITIATIVE
COMPETITIVE ISSUES WORKING GROUP
IMPLEMENTATION REPORT
SEPTEMBER 2004

I. Description of The CIWG's Approach on Implementation

Except to the extent specified in the CIWG Final Report or a specific subgroup report. CIWG did not focus on implementation questions in the context of its discussions. It made no specific recommendations to changes in Commission rules or the Public Utilities Act or other laws beyond any specific recommendations that may have been mentioned in the text of their final report or a subgroup report. The CIWG neither drafted any legislative language nor reached consensus that legislative changes should or should not be required. These suggestions below are not the product of consensus discussions and so do not necessarily reflect the full agreement of the parties. They do not imply that other or different or additional implementation approaches should not be considered. Nor are they intended to suggest that the parties are prohibited from suggesting or recommending specific action by the Commission or the legislature on their own. Statements about the need for, or the absence of need for, any implementation step with respect to a particular implementation item are not intended to comment on the need for, or the absence of the need for, an action of that type in other circumstances.

~~*The CIWG reached consensus on a number of working propositions and mechanical issues with respect to achieving a better functioning competitive marketplace.* The CIWG for the most did not focus on implementation questions except insofar as the questions posed by the Commission implied a specific implementation approach. The Working Principles addressed by the CIWG also may imply an implementation method but were intended mainly as standards for measuring actions.~~

II. Question Addressed by the CIWG

The CIWG addressed the ICC Final Questions 67-79 directed to the Group The CIWG *also* developed a set of deductive "Working Propositions" against which ongoing work of the Commission and others in the Post-2006 Initiative can be measured and that can serve as a guide in answering other questions as they might arise. ~~The CIWG addressed the ICC Final Questions 67-79 directed to the Group and~~. The CIWG also established five Subgroups to address practical and operational issues relevant to the competitive environment. The Subgroups addressed:

ARES Certification, Licensure and Tariffs;
Billing, EDC Charges, SBO, Timing, Consolidated Billing;
Customer Information and Data Flow;
Switching Process; and
Wholesale and Transmission.

III. Implementation Methods

This Implementation Report follows the presentation format of the CIWG Final Report. Each element below for which an Implementation Method is suggested there will be a brief notation, in **BOLD CAPITAL LETTERS**, usually indicating whether Legislation or a Commission Order or Rule or some combination thereof would appear ~~the~~ *an*~~most~~ obvious~~ and efficient~~ Implementation Method or whether the recommendation in question is susceptible to some other approach. *However CIWG did not specifically discuss and/or agree upon implementation methods*

A. Working Propositions *(Still need to take out or make this Part B and what is now Part B Part A for reasons previously stated.)*

The CIWG developed a number of Working Propositions that can serve as deductive principles against which other more specific proposals or Commission action might be measured. The Working Propositions below address areas considered significant for the overall development of Illinois' transition to a competitive electric market.

Integrated Distribution Company (IDC) & Functional Separation Rules

With reference only to the offering of permitted, non-mandatory energy products in their own service territories as set forth by the PUA (16-121, 16-119) and in ICC administrative rules, the current structural options and requirements under IDC and functional separation rules for utilities are sufficiently fair and reasonable as not to require significant change. The CIWG recognizes that there

may be a concern that permitted image advertising may cross the line into impermissible marketing, and the ICC should be vigilant in its enforcement of such rules. *VIOLATIONS OF EXISTING RULES COULD~~CAN~~ BE ADDRESSES IN* **~~ICC RULEMAKING OR~~** *AN* **ICC COMPLAINT PROCEEEDING**. *TO THE EXTENT RULE CHANGES ARE DEEMED NECESSARY~~THAT THERE ARE MATTERS THAT REQUIRE CLARIFICATION CONSISTENT WITH THIS WORKING PROPOSITION~~ THE ICC COULD~~CAN~~ UNDERTAKE RULEMAKING~~.~~

Because IDC rules have been interpreted by some in ways that result in difficulty for customers to learn about rates and programs that may be available from utilities, the Commission should clarify that IDC rules allow for utilities to conduct public information programs to promote green power and energy efficiency programs offered by all LSEs (e.g. CT's "Wait 'til 8" program, CA's "Flex Your Power Now" program, etc.) and for the provision of other rate and service information to all customers upon request. *POSSIBLY* **ICC** *DECLARATORY RULING, ICC* **RULEMAKING**, *ICC RATE CASE ORDER* **OR ICC COMPLAINT PROCEEDING**. In the alternative, Section 16-117 of the PUA could be amended to provide for such information programs. **LEGISLATIVE CHANGE TO PUA**.

Management of Customer Migration Risk

The CIWG concurs with the responses of the Rates Working Group (RWG) in its answers to ICC Final Questions 50 & 51. The questions and answers are as follows, as quoted from the report of the RWG:

50) Should rates for customers who return to bundled service be different from the rates offered to basic bundled service customers? Do customers who move back and forth between bundled services and delivery services cause additional costs that should be charged only to those customers?

51) Should customers returning to bundled service be put on time-based rates as their default option, under opt-out conditions?*

A. "These questions each address rate treatment for customers switching to bundled service. The Utility Service Obligations WG has discussed the nature of the utility services available to migrating customers upon their return to utility commodity service in greater detail. The RWG will consider how the various Scenarios may affect the rate design of the various services that may be offered by utilities to such customers.

“The RWG reached consensus that, under Scenarios 1 and 2, if the switching and volume risk is priced into the RFP or auction bid and borne by the wholesale suppliers in an undifferentiated manner, then there is no need for commodity charges to customers returning to "bundled" service to differ from those applicable to customers who have never left "bundled" service. Moreover, under procurement Scenarios where the risks and costs of migration are built into the bid price in an undifferentiated manner, retail customers should be able to come to and go from the standard offer service (i.e., the "bundled" rate applicable to their class). The RWG notes that the switching rules must be known by and consistent with the terms of the auction and/or RFP bids.

“The RWG further reached consensus that other procurement Scenarios where the risks and costs of the migration of customers able to return to the standard offer service (i.e., the "bundled" rate applicable to their class) are not built into undifferentiated supply bid prices (e.g., vertical integration, an RFP with explicitly higher costs for intra-period returning customers, traditional cost-of-service models) may include rates under which returning customers pay commodity charges reflecting the incremental cost, if any, of their return to utility commodity service. Those costs may be recovered by utilities from such customers through mechanisms which recover these incremental costs from such returning customers. A minimum stay period may also be utilized to mitigate the level of such incremental costs, which period may be coupled with a cost-based charge for early termination. Recovery of incremental commodity costs incurred by reason of the option to return, prior to the exercise of that right, is addressed in an earlier consensus item; as noted, the RWG did not reach consensus on whether such costs can properly be assigned to other customers.

* “The RWG is uncertain as to the meaning of the phrase "under opt-out conditions" included in Issue 51, and the author of the Issue was not available to the RWG for clarification. The RWG, however, believes that a reasonable response to the core issue can be provided jointly with Issue 50.”
THERE WAS NO AGREEMENT ON AN IMPLEMENTATION METHOD.
Alternative: THERE ARE ~~MAY WELL BE~~ DIVERGENT VIEWS ON THE MOST APPROPRIATE MEANS OF ADDRESSING **CUSTOMER MIGRATION ISSUES** ***-CONSISTENT WITH THE~~THIS~~ WORKI~~K~~NG PROPOSITION ADOPTING THE RWG’s ANSWERS TO QUESTIONS 50 & 51. THIS MIGHT POSSIBLY BE ADDRESSED IN*** **~~WILL LIKELY BE MANAGED THROUGH SOME~~**

~~OF~~ **THE PROCEEDINGS ASSOCIATED WITH ICC APPROVAL OF A SUPPLY ACQUISITION METHOD*~~. WILL DETERMINE WHAT~~* **AND THEREFORE SOME COMBINATION OF ICC ~~RULEMAKING OR ORDERS APPROVING TARIFFS WOULD BE~~** ***~~APPROPRIATE.~~*** **INVOLVED. HOWEVER, TO THE EXTENT ~~THAT~~** ***~~MATTERS RELATED~~*** **~~MINIMUM-STAY REQUIREMENTS~~** ***~~OR TO THE BUY-OUT OF SUCH REQUIREMENTS MAY~~*** **~~ARE ADDRESSED~~** ***~~IMPLY~~*** **~~, LEGISLATIVE CHANGES~~NAGES MAY BE ~~NEEDED~~**~~.~~

HOWEVER MININMUM STAY REQIUREMNETS SPECIFIED, IN SECTION 16-103 (d) THE PUA, FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS MIGHT REQUIRE MODIFICATION
(Note: If the concern is that 16-103 (d) provides:
"Any residential or small commercial retail customer which elects delivery services is entitled to return to the electric utility's bundled utility tariffed service offering provided in accordance with subsection (c) of this Section upon payment of a reasonable administrative fee which shall be set forth in the tariff, provided, however, that the electric utility shall be entitled to impose the condition that such customer may not elect delivery services for up to 24 months thereafter."

Should limit comment on need for legislative change to that specific section. Simply cannot and will not agree to language in the report that suggests or implies that legislation is needed for minimum stay or buyout in any other circumstance.)

Renewable Portfolio Standards

If any Illinois Renewable Portfolio Standards (RPS) measure is adopted it should be competitively neutral and applied equitably to electric utilities (as defined in Section 16-102 of the Act), any Basic Generation Service auction winners or other full requirements electric suppliers serving some or all of a utility's load serving obligation, as appropriate, and ARES (as defined in Section 16-102). An appropriate mechanism for efficient compliance is a system of tradable "green tags" associated with renewable energy facilities that satisfy the RPS requirements. Development and use of an exchange through which such facilities may sell such tags and through which electric utilities, their full requirements electric suppliers, and RES may buy such tags may facilitate use of this mechanism. Subpart E ARES established pursuant to 83 Illinois Administrative Code Part 451, self generators, and cogenerators should not be subject to RPS requirements. ~~**THE CIWG**~~

~~OPERATED ON THE BASIS THAT~~ *MANDATORY* **RPS STANDARDS** *WOULD* ~~*MIGHT*~~ ~~WOULD~~ **BE A LEGISLATIVE MATTER AND THAT SUCH OPERATIONAL MATTERS AS A "GREEN TAGS" PROGRAM** *COULD* ~~WOULD~~ **BE HANDLED THROUGH ICC RULEMAKING OR ICC APPROVALS OF UTILLITY TARIFFS**.

Aggregation & Voluntary Grouping of Customers

1) An aggregator of customers on a voluntary basis for the purpose of purchasing electric power and energy that does not itself offer electric power and energy for sale should not be considered an ARES pursuant to Section 16-102 of the Act. **MAY REQUIRE LEGISLATIVE CHANGES DUE TO THE DEFINITION OF ARES IN THE PUA. ALTERNATIVELY, THE ICC HAS EXISTING AUTHORITY TO ADOPT RULES REGARDING AGGREGATION UNDER SECTION 16-104(b) OF THE PUA**.

2) To the extent that the energy components of rates for utility bundled services are primarily a function of competitive supply acquisition, it is likely that "opt-out" aggregation through local government will not be of additional value. ("Opt-in" municipal aggregation already exists as a service opportunity.) **OPT-OUT AGGREGATION WOULD REQUIRE LEGISLATIVE CHANGES. THIS RECOMMENDATION DOES NOT CONTEMPLATE ANY SUCH CHANGES.** ~~**SPECIFICS OF**~~ **OPT-IN AGGREGATION** *WOULD NOT NECESSARILY REQUIRE* ~~**PROGRAMS MAY**~~ *NEW RULES OR TARIFFS* ~~**REQUIRE ICC RULEMAKING OR TARIFF APPROVAL**~~.

3) The voluntary grouping of customers for purposes of energy purchases should not be unnecessarily inhibited by utility delivery services tariffs, rules and practices in areas such as synchronization of meter reading cycles and requirements for common ownership. The costs of reasonable accommodations for such aggregation programs should be borne by the cost causers. **ICC ORDERS ADOPTING TARIFF REVISIONS** *AS NEEDED*.

4) At this time there is not sufficient indication of a need for regulation or licensure of parties organizing customers for the purpose of purchasing energy supply beyond existing commercial law in Illinois. ~~**TO THE EXTENT THERE IS A FUTURE NEED IN THIS REGARD, THE ICC MAY NEED LEGISLATIVE AUTHORITY IN ORDER TO ADOPT RULES TO REGULATE SUCH PARTIES, MUCH AS THE ICC HAS BEEN GIVEN AUTHORITY OVER METER SERVICE PROVIDERS**~~.

Demand Response/Curtailment

The integration of ComEd into PJM and the ~~expected~~ integration of Downstate utilities into MISO present new opportunities for customer participation in demand response programs operated by RTOs, Load Serving Entities (including RESs and utilities), and Curtailment Service Providers (CSP). Utility tariffs, rules and business practices should facilitate, promote or provide, as appropriate, for participation in such programs by both bundled and unbundled service customers irrespective of the supply acquisition methods approved by the ICC. **MAY BE FACILITATED ~~OR GOVERNED~~ BY ICC ADOPTION *OR MODIFICATION* OF UTILITY TARIFFS AND SUBSEQUENT ENFORCEMENT. FURTHER, ICC ADVOCACY OF DEMAND RESPONSE PROGRAMS THROUGH RTO ACTION MAY BE DESIRABLE**.

Competitive Declaration

The CIWG did not achieve consensus on the matter of the Competitive Declaration process. Therefore, the CIWG presents below a distillation of the various viewpoints and related commentary offered by some parties in support of those viewpoints that emerged during the Group's discussions

Viewpoint 1: The competitive declaration process should continue in a manner consistent with the standards for review articulated by the Commission in its order in the single competitive declaration thus far reviewed. **PUA CHANGES NOT REQUIRED**

Commentary: Initially, it is important to recognize that this issue concerns only large commercial and industrial customers; under the PUA, utilities retain an obligation to provide power and energy to all residential customers and to small businesses. The Customer Choice Act of 1997 is premised on a transition to competitive markets and removal of regulated mandated services when markets can appropriately provide the services customers seek. Furthermore, competitive markets are advanced for all customer segments when competitive conditions in individual customer segments are recognized, after careful consideration, rather than waiting for other segments to "catch up". In fact, the entire transition to customer choice, which was phased in over a multi-

year period by customer class, starting with the largest customers first, recognized a natural progression from large, lower transaction cost customers, to smaller, higher transaction customers as markets develop. The customer switching numbers in parts of Illinois have borne out this natural progression expectation.

Thus far, one request by a utility for a competitive declaration for service to its largest customers has been allowed to become effective "under operation of law." The Commission's process in considering that declaration request demonstrates that the competitive declaration process can be carefully administered and should continue. In addition, the process urged by various parties expressing concerns and being utilized by the Commission permits the Commission to continue to monitor market conditions after a declaration is allowed to take effect so it can take appropriate actions if the market falters. Finally, all signs are that the market is working well for the customers whose service has been declared competitive and the Commission has not received requests at this point to take any corrective action on the basis of any demonstration of problems with the market. Thus, the existing standards for a competitive declaration are adequate, provide the Commission with sufficient flexibility, and contribute through their implementation to the continued improvement in competitive conditions. They should be maintained. Removal of this provision from the carefully thought out and comprehensive electric restructuring act of 1997 will substantively un-do what the General Assembly set out to do.

Viewpoint 2: The competitive declaration process should be continued only if the standards for declarations are modified to assure the existence of an effectively competitive market for affected services and customers – one with prices constrained by competitive forces, etc. – before the option of a cost-based service is eliminated. **THIS *COULD*~~WOULD LIKELY~~ REQUIRE REVISIONS TO PUA SECTION 16-113 TO INCLUDE MORE SPECIFIC CRITERIA TO BE CONSIDERED BY THE ICC IN DECIDING WHETHER TO PERMIT A COMPETITIVE DECLARATION TO TAKE EFFECT**. ***COULD POSSIBLY BE ADDRESSED THROUGH ACOMMISSION ORDER APPLYING THE CURRENT CRITEIA DIFFERENTLY***

Commentary: The current statutory criteria and the Commission's application of them do not assure that reasonably equivalent services, at comparable prices that are effectively constrained by market forces, actually are provided by the markets in which customers of services declared competitive are compelled to seek

substitute services. Moreover, the statutory criteria do not require a finding that the market conditions on which the Commission relies in approving a declaration are sustainable and likely to persist.

New, more stringent criteria are needed. The competitive declaration criteria, and the Commission's process for assessing competitive declaration requests, should assure that customers will not be forced to take different, less satisfactory services or to pay prices that are inflated by exercises of market power. The current criteria are not adequate to that task.

Viewpoint 3: The competitive declaration process should only be continued if markets provide consumers with electricity supply at prices that are effectively constrained by market forces and if competitive electricity suppliers that are willing, otherwise qualified and able to serve customers are not unfairly barred from doing so. **TWO AREAS FOR POTENTIAL LEGISLATIVE CHANGE ARE: (1) SECTION 16-113 OF THE PUA *COULD BE ELIMINATED OR MODIFIED* TO INCLUDE MORE SPECIFIC CRITERIA TO BE CONSIDERED BY THE ICC IN DECIDING WHETHER TO PERMIT A COMPETITIVE DECLARATION TO TAKE EFFECT; (2) THE RECIPROCITY CLAUSE IN SECTION 16-115(d)(5) MIGHT BE REVISED OR REPEALED~~.~~.**

Commentary: It was established in these workshops that many otherwise qualified competitive suppliers are not currently eligible for certification in Illinois as a result of the reciprocity clause in the current PUA. Therefore, current competitive declarations must be voided and utilities must be required to provide stably priced bundled services to all consumers unless the reciprocity clause is eliminated or substantially modified to lessen this major barrier to entry of qualified competitive suppliers into the Illinois market.

Reporting Requirements

Current reporting requirements for all Illinois LSEs should be reviewed for their usefulness and modified or supplemented as needed. ***LEGSILTIVE CHANGES DO NOT APPEAR TO BE IN ORDER BUT THE ICC MAY CHOOSE TO MODIFY ITS RULES.***

B. ICC Final Questions (67-79)

The CIWG was assigned ICC Final Questions 67-79 that were aggregated under the Competitive Issues section of the Final Questions Paper. The

CIWG's answers to the assigned Questions are presented in numerical order.

67) What measures should the Commission undertake to encourage competition for smaller-use customers? ~~T~~

Full consensus was not achieved with respect to #67, for which ~~a~~ dissenting or alternative points of view are presented. Presented immediately below as Option A is the formulation to which most participants agreed upon as a general principle. Option B is a formulation and commentary submitted as a variation on Option A. Option C is a formulation submitted as an alternative view but that need not be inconsistent with the formulation in Option A.

Option A: The ICC should never increase prices to customers solely to promote customer switching. The Commission should accommodate competitive choice by residential and small commercial customers by assuring: **THE FOLLOWING ELEMENTS ARE *POTENTIALLY SUBJECT* ~~SUSCEPTIBLE~~ TO VARIOUS COMBINATIONS OF LAW, RULE, ORDER ~~N~~A*N*D/OR T~~R~~A*R*IFF**.

- maximum practicable freedom of migration away from and back to utility service, while avoiding shifting costs to non-migrating customers; **LAW/RULE/ORDER/TARIFF**
- avoidance of punitive exit or return conditions; ***LAW/*RULE/ORDER/TARIFF**
- maximum practicable opportunity for aggregation of such customers and load, including reasonable opportunities for aggregation within multi-tenant buildings; **LAW/RULE/ORDER/TARIFF**
- reliance on market based pricing for utility provided energy services that will obviate any need for headroom adders; ***LAW/*ORDER/TARIFF** and
- disaggregation of rate elements to facilitate comparison shopping; **ORDER/TARIFF**

Option B: The Commission should never permit rates for non-competitive tariffed energy services for smaller-use customers to be increased just to enable competitive entry. In other words, no form of "Let's get prices up so that we can have 'competition'" is acceptable. **ORDER/TARIFF**

Commentary: Only a clear understanding and implementation of that policy can prevent a push to "market based" pricing to enable competitive entry, even when prices from any prospective suppliers exceed existing service rates. Artificial competition based on artificially increased rates can deliver none of the equitable and timely price benefits for consumers the Act contemplates. *See § 16~~6~~-101A(e) of the Act.*

"Competition" that requires such subsidies is not sustainable, effective competition that can deliver "in an equitable and timely fashion . . . lower costs for electricity." The mere possibility of future benefits does not nullify or justify the current economic harm to consumers. And "choice" alone does not satisfy the statutory standard for consumer benefits. The ability to choose among inferior or higher priced services is neither a meaningful choice nor a real benefit for consumers. The effect is a price increase -- for the benefit of potential market entrants.

Potential market entrants seeking subsidies for their entry should not seek to impose a hidden tax on consumers of an essential service. As in other competitive markets, commercial enterprises wishing to participate in a market – not consumers -- should shoulder the risks and costs of their market entry and market development.

As recognized in one of the principles adopted by the working group, the Act's goal is not competition for competition's sake, but just and reasonable prices, which may be achieved through competition.

Option C: In order for competitive markets to be robust and sustainable, the initial default price must be set at a level that does not impose barriers to new market entry. In addition, subsequent adjustments to the default price must be allowed to reflect changing market conditions over time. Should the initial default price, established through a transparent mechanism, fall short of being conducive to new market entry, the Commission should consider adjusting the initial default price. Such an adjustment will prevent competitive market failure. Nothing should prohibit the Commission from adopting and advocating a market design that brings the benefits of a long-term, robust sustainable competitive market to customers. ***~~ORDER/TARIFF~~WHILE THERE MAY BE SOMEWHAT DIFFERING VIEWS AS TO EMPHASIS ON THE MOST APT MEANS OF ADDRESSING OPTIONS A & B ABOVE, THERE ARE LIKELY SHARPER DIFFERENCES WITH RESPECT***

~~***TO OPTION C, WITH SOME VIEWING LAW CHANGES AS NECESSARY AND OTHERS SEEING THIS AREA AS SUSCEPTIBLE TO ICC DECISIONS IN THE CONTEXT OF RATE AND TARRIFF ORDERS.***~~***AGREEMENT WAS NOT REACHED***

68) What measures should the Commission undertake to encourage competition in the service areas of the State's smallest utilities?

A. In order to better provide customers of small utilities in Illinois with opportunity for competitive choice, small utilities should adopt relevant practices, rules and tariffs that are comparable to those of the large utilities close by, surrounding them or in the same control area or RTO. ~~**ICC HAS SUFFICIENT EXISTING TARIFF APPROVAL AUTHORITY.**~~***ORDER/TA~~~~***R***~~***RIFF.***

69) What role could municipal aggregation programs play in encouraging retail competition for smaller-use customers?

A. If competitive supply acquisition methods are adopted and/or the Commission and utilities remove barriers to competitive choice identified in the Post-2006 process, there would appear to be little need or role for municipal aggregation. For further comment please see the Working Proposition on Aggregation & Voluntary Grouping of Customers. ***TO THE EXTENT THAT THE DEFINITION OF "ARES" MIGHT BE INVOVLED IN THIS AREA, CHANGES MIGHT BE NEEDED TO THE PUA. ALTE~~***3***~~***RNATIVELY, THE ICC HAS RELEVANT AUTHORITY TO ADOPT RULES REGARDING AGGREGATION UNDER SECTION 16-104(b) OF THE PUA.***

70) What barriers to participation in the market can and should be removed?

A. Various Subgroups addressed the barriers issue. Please see the attached Subgroup reports.
LAW/RULE/TARIFF/ORDER/UTILITY BUSINESS PRACTICES.

71) Should regulations regarding codes of conduct and utility-affiliate activities be modified?

A. CIWG did not fully address issues presented in #71 beyond matters substantively subsumed under the Working Proposition on IDC/Functional Separation Rules. ~~ICC ADMINISTRATIVE RULES CAN ADDRESS THESE ISSUES.~~***ICC RULEMAKING.***

72) How will the Commission address the special cost allocation and affiliated interest problems that accompany a utility with joint costs for regulated and unregulated activities?

A. To the extent that bundled rates for utilities without generation are set on the basis of cost-based delivery services rates applicable to both choice and bundled customers to which energy prices are added, then the problem of joint costs should be minimal. In the case of utilities that retain rate-based generation for inclusion in bundled rates, the Commission should require that rate setting information be supplied such that the Commission will have the ability to set delivery service rates that are applicable for both bundled rates and delivery services. ***AS ALSO DISCUSSED BY THE RWG,*** **ICC ~~ADMINISTRATIVE~~*ORDERS AND* RULE*MAKING ARE THE MOST APT MEANS OF* ~~S CAN~~ ADDRESS*ING* THESE ISSUES*.*** ~~**AS COULD ICC ORDERS APPROVING UTILITY TARIFFS**~~.

73) What further progress can be made towards uniform tariffs?

A. Various working groups are addressing the issue of uniform tariffs, rules and practices. ***POSSIBLY*** **ICC RULEMAKING AND ICC ORDERS APPROVING TARIFFS*.*** ~~***, ESPECIALLY AS INFOMRED BY THE STAKEHOLDER WORKSHOP PROCESS,***~~ ~~**ARE THE MOST LIKLEY MEANS OF ADDRESSING SUCH ISSUES**~~.

74) Are there specific actions the Commission can take, either through the FERC or other national or regional forums, to improve the competitiveness of the Illinois wholesale market, either through improvements in transmission availability or through better market design?

A. The Commission can be especially influential at FERC and with RTOs (PJM and MISO) in assuring that wholesale rules and practices are consistent with Illinois' policy of accommodating customer choice while simultaneously ensuring the protection of Illinois customers. The report of the CIWG Wholesale & Transmission Subgroup is a primary basis for the answer below. The Commission should give special consideration to the following important issues:

(a) monitoring of areas in Illinois where ownership of generating capacity is highly concentrated to ensure that the increased

competitiveness of those markets that is anticipated by AEP's entry into PJM actually occurs;

(b) supporting PJM's efforts to revise its capacity construct to assure better overall system reliability and encouraging MISO to adopt a similar capacity construct;

(c) monitoring the application and hedging of congestion costs in Illinois control areas subject to Locational Marginal Pricing (LMP) and Financial Transmission Rights (FTR) to determine if policy changes are needed to protect consumers from unhedged congestion costs;

(d) eliminating seams issues affecting the Illinois competitive market between control areas and between RTOs;

(e) creation of a functioning joint and common PJM/MISO market;

(f) appropriate transmission rate designs which do not result in inequitable or inappropriate cost shifts to Illinois consumers;

(g) development of a standardized, low cost set of interconnection rules and procedures for the interconnection and operation of small (less than 20 MW) Distributed Generation; ***POSSIBLY ICC RULES AND ORDERS.***

(h) resource adequacy rules; ***MAY BE AT LEAST PARTLY ADDRESSED IN THE CONTEXT OF THE ICC OR LEGISLATIVE PROCESSES ASSOICIATED WITH DETERMINING A UTILITY SUPPLY ACQUSITION MECHANISM.***

(i) the conditions of obtaining Network Integration Service; and

(j) pricing of Imbalance and other Ancillary Services.

THESE MATTERS *SHOULD MAINLY* ~~ARE SUSCPETIBLE TO~~ BE~~ING~~ ADDRESSED BY MEANS OF ICC ADVOCACY AND PARTICIPATION AT FERC AND RTOs *WITH ATTENTION TO AREAS IN WHICH THE EXERCISE OF ICC AUTHORITY MAY FACILITATE THE ELIMINATION OF RTO SEAMS.* ~~.~~

75) Is providing competitively priced wholesale power for small-use customers enough to meet the "benefits" and "equity" directive in the '97 Law? (Rather than focusing on retail competition)

A. Basing utility supplied power and energy to residential and small commercial customers on market pricing should be considered as one way of providing the benefits from a competitive market to those customers. The method of supply acquisition by the utility will be a key factor to consider. It should also be understood that utility energy supply will tend to focus mainly on a basic service price while innovation in pricing and related utility

provided services will likely be found mainly through competitive choice for such customers.

76) Should retail competition be encouraged if bundled use customers reap benefits through wholesale competition?

A. Competition in both the wholesale and retail market segments should be encouraged as complementary and effective competition in both arenas will deliver value to customers.

77) Should the regulatory regime create rules for LDC's to provide competitively priced power to individual customers?

A. See #75. Procurement methods by utilities will be a key factor determining whether LDCs provide competitive priced power and energy. The scope of this function and the customers to whom LDCs should provide such services will be addressed by other Working Groups. ~~**THESE ISSUES CAN BE ADDRESSED PRIMARILY THROUGH ICC RULEMAKING AND ORDERS APPROVING TARIFFS**~~.

78) How should residential choice be addressed (including to a certain degree whether true "choice" itself at the residential level is an appropriate goal)?

A. Within the context of the overriding goal of the PUA to achieve just and reasonable rates, the opportunity for residential and small commercial competitive choice can be advanced by identifying and removing barriers to choice, minimizing transaction costs, providing for accurate, transparent utility pricing and reducing regulatory uncertainty. **DEPENDING UPON THE PARTICULAR BARRIERS IDENTIFIED REUIRED ACTION WOULD INCLUDE LEGISLTIVE CHANGES, ICC RULEMAKING, ICC ORDER AND UTILITY TARIFFS**.

79) What are the barriers to competitive providers providing demand response programs and/or dynamic pricing offers and what can FERC and/or the Commission do to address such?

A. The Commission should focus on encouraging the development of effective Demand Response programs in RTOs and assuring that utility tariffs, rules and practices do not erect barriers to customer participation in DR programs offered by Load Serving Entities and/or RTOs. See further the Working Proposition on Demand Response/Curtailment. **THE MOST DIRECT MEANS**

OF ADDRESSING SUCH ISSUES ARE THROUGH ICC RULEMAKING OR ICC ORDERS AND UTILITY TARIFFS THAT ARE COORDINATED WITH RTO PROGRAMS *AND THE ACTIVE PARTICPATION OF STAKEHOLDERS IN RTO PROCESSES.* ~~.~~

C. Subgroups

The CIWG established five Subgroups to address highly specific, practical operational issues having implications for the competitive environment. The Subgroups, to varying degrees, were able to identify specific issues and to arrive at agreed-upon solutions to perceived problems or for needed changes upon the end of the Transition. For detailed information beyond that presented below please consult the Subgroup reports and presentations in the attachments.

ARES Certification, Licensure and Tariffs Subgroup

The ARES Subgroup had extensive discussions regarding the specifics of ICC Rule Part 451, ARES reporting requirements, EDC registration requirements for ARES, reciprocity requirements and certain other issues.

The subgroup achieved consensus on a number of changes to Part 451 or its application that are outlined in the subgroup's final report along with certain other elements of Part 451 for which consensus was not achieved. **SPECIFIC PROPOSED REVI*/*SIONS TO PART 451 ARE INCLUDED IN THE SUBGROUP REPORT**

The subgroup agreed that at this time changes were not needed for current ARES reporting requirements and that the ICC website should be more frequently updated with ARES contact information.

The subgroup reached consensus that, whenever possible and from which benefits may be derived, an aspiration for greater uniformity of terms in RES agreements across utility service territories was desirable. **IF DEEMED NECESSARY BY THE ICC RULEMAKING OR ICC ORDERS *COULD*~~WOULD~~ BE A PROPER MEANS OF ADDRESSING THESE ISSUES**.

While consensus was not achieved with respect to the reciprocity requirements, the subgroup has provided a detailed review of the differing points of view and possible approaches to resolving current ambiguities. **LEGISLATIVE CHANGES *COULD*~~MIGHT~~ BE REQUIRED ~~FOR PURPOSES OF ANY ADDITIONAL EFFORTS~~ TO CLARIFY OR OTHERWISE REVISE THE RECIPROCITY CLAUSE**.

Billing, EDC Charges, SBO, Timing, Consolidated Billing Subgroup

The Billing Subgroup, while not developing specific solutions, was able to identify a set of issues associated with the information flow and financial arrangements between EDCs and RES/ARES with respect to billing. These included:

- bill formatting;
- spilt billing for gas and electric service in dual utility areas;
- billing agency;
- SBO requirements;
- EDC payment terms for SBO;
- SBO report coordination with 820 data & ACH receipts;
- Timing of 867 & 810 reports;
- Coordination of Interim Supply with customers going on SBO;
- refund processes for RES overpayments to EDCs;
- eligibility of customers with prior balances;
- prior balance collections responsibilities.

The Subgroup recognized that certain issues related to their considerations, including uniformity, were being addressed in the Customer Information Subgroup and other elements of the post-2006 process. **ICC RULEMAKING OR ICC ORDERS AND UTILITY COULD BE USED TO ADDRESS THESE ISSUES IN THE ABSENCE OF AGREEMENT AMONG UTILITIES AND (A)RES** ***IN FURTHER STAKEHOLDER WORKSHOPS. IT IS POSSBILE THAT LAW CHANGES TO SBO PROVISIONS MIGHT BE IN ORDER.*** -

Customer Information & Data Flow Subgroup

The objective for this Subgroup was to identify business transactions and specific data fields required to facilitate retail competition with specific emphasis on better enabling consumers to choose between alternative supply options without undue hardship.

Subgroup participants generally agreed that all market participants (presuming appropriate legal authorization) must have equal access to all relevant pricing determinants utilized by the incumbent public utility for its tariffed services. Access to this information permits the consumer to have access to relevant and necessary information which enables the consumer to make an informed choice regarding their power and energy needs.

Two categories of data detail were identified as necessary for the efficient transfer of data among and between market participants post 2006: (1) Data Transactions for Retail Pricing and (2) Data Transaction for Retail Switching and Consumer Billing. While to date most participants agreed that much of the detail is being provided; there is no consistency or uniformity in the type of data or form of data being transacted today.

The Subgroup concluded after just a few very productive meetings that the best way to improve data business transaction for the Post 2006 era would be through the development of a centralized forum to effectuate change in how data flows among and between market participants in the future. As more finely detailed in the CIWG Subgroup Report on "Customer Information and Data Flow"; the Subgroup recommends the ICC facilitate such a centralized forum for an on-going working group to deal with data transaction issues as they arise and that public utilities be permitted to recover expenses for continued implementation and maintenance of systems that continue to permit customers access to all available supply options offered Post-2006.

Representatives participating in this Subgroup included representatives from both utility business policy departments and IT departments; energy consultants, customer representatives, and competitive retail electric suppliers. **TO THE EXTENT THAT UTILITIES AND (A)RES COULD NOT AGREE ON THESE ISSUES ICC RULEMAKING AND ICC ORDERS AND UTILITY TARIFFS COULD BE PROPER MEANS OF ADDRESSING THESE ISSUES**.

Switching Process Subgroup

The main focus of the Switching Process Subgroup was on the identification of issues associated with the exercise of choice by residential and small commercial customers in the post-2006 period. The subgroup recommended a two-pronged customer education effort that would rely on an internet website providing information on a full range of electric choice issues relating to residential and small commercial customers and a request based system by which utilities would provide printed materials to assist and educate such customers. The subgroup identified several areas in which helpful cross-references between the ARES Certification Rule and such Illinois Statutes as the Consumer Fraud and Deceptive Practices Act should be made. The subgroup further urged that as the residential and small commercial markets develop, attention be given to the specific issues of "mass switching" should problems arise for utilities and RESs in connection with processing switches for large volumes of customers, many of whom may not be

sophisticated “shoppers”. . The subgroup discussed but did not resolve issues associated with suggested rule changes directed at return of deposit and billing dispute procedures for RES/ARES.

With respect to larger commercial customers, the subgroup discussed but did not resolve a discussion of problems associated with the manual processing of agency agreements. The subgroup also suggested that at some future time the Commission may wish to consider reviewing “agency” issues in connection with PPO service offerings once threshold procurement issues had been resolved.

TO THE EXTENT THAT UTILITIES AND (A)RES COULD NOT AGREE ON THESE ISSUES ICC RULEMAKING AND ICC ORDERS AND UTILITY TARIFFS COULD BE PROPER MEANS OF ADDRESSING THESE ISSUES.

Wholesale & Transmission Subgroup

The Wholesale & Transmission Subgroup addressed specific topics in three broad categories as related to the development of retail customer choice: the impact of RTO/OATT development, wholesale competition, and the “wheeling” of power in and out of Illinois. The subgroup reached consensus that the reliance on approaches new to Illinois, such as integration of utilities into PJM and MISO, locational marginal pricing (LMP) and Financial Transmission Rights (FTRs) require careful ongoing monitoring to assure the delivery of intended competitive market benefits.

The subgroup supported the scheduled integration of AEP into PJM because it should make the capacity market more competitive, the development of demand-side management to reduce capacity costs and appropriate compensation mechanisms for generating plant operational characteristics that contribute to reliability. The subgroup also noted that the movement to LMP should encourage the construction of generation and transmission capacity where needed but urged the careful monitoring of its use, results and implications, and endorsed the allocation of Financial Transmission Rights (FTR) so as to maximize the consumer benefit of hedging against congestion risk.

Finally, the subgroup agreed that transmission rate design in PJM and MISO should avoid allocating unfair cost burdens to Illinois consumers, that seams issues be fully addressed, that there should be uniform interconnection rules that accommodate distributed generation, and that there should be utility rates available that recognize, to the extent

practicable, the value of distributed generation to the system. **THESE ISSUES ARE PRIMARILY*, BUT NOT NECESSARILY EXCLUSIVELY,* MATTERS SUSCEPTIBLE TO BEING ADDRESSED THROUGH ICC ADVOCACY AND PARTICIPATION AT FERC AND RTOs**.

~~V.~~

OGC Note: The following are comments from Pat Giordano on behalf of BOMA, Trizec Properties, Inc., and Shorenstein Realty Services, L.P.

Members of the Competitive Issues Working Group:

The Building Owners and Managers Association ("BOMA"), Trizec Properties, Inc. ("Trizec") and Shorenstein Realty Services, L.P. ("Shorenstein") support the consensus items reached by the Competitive Issues Working Group ("CIWG") after extensive discussions in the workshops over the past several months.

However, implementation methods were never discussed in those workshops. Therefore, the Draft Implementation Report (the "Draft Report") of the CIWG can't be said to reflect the consensus of parties to the CIWG on implementation methods. Rather, although parties have been allowed to file written comments on these issues, the Draft Report ultimately reflects the convener's view of implementation methods. In our view, the issues of disagreement posed by the Draft Report likely would not now be occurring if implementation had been discussed during the workshops.

As you know, we submitted certain proposed modifications to an earlier version of the Draft Report which were not included in the latest version. The following is a discussion of those comments that we consider particularly important, and which we again request be included in the final version of the CIWG's Implementation Report.

1. *Viewpoint 3* under *Competitive Declaration*. Since the CIWG did not reach consensus on the Competitive Declaration issue, three different viewpoints were submitted on this issue. As you know, Trizec, Shorenstein, the Illinois Industrial Energy Consumers ("IIEC"), the Illinois Department of Commerce and Economic Opportunity ("DCEO")[1], and the Illinois Attorney General's Office supported Viewpoint 3, which states specifically that "current competitive declarations must be voided and utilities must be required to provide stably priced bundled services to all consumers unless the reciprocity clause is eliminated or substantially modified." Nevertheless, the implementation method we proposed that "the competitive declaration section of the Public Utilities Act (Section 16-113) would need to be repealed unless the reciprocity clause is repealed or substantially modified" has not yet been put into the Implementation Report. This change is necessary to have an implementation method which accurately reflects Viewpoint 3.

2. *Paragraph 3* under *Aggregation and Voluntary Grouping of Customers* should be modified as recommended in our initial comments to acknowledge that some changes to utility delivery service tariffs designed to unnecessarily inhibit the

[1] ***OGC Comment:*** While we have not taken into account the substance of any comment received after 5:00 p.m. on October 14, 2004, fairness requires that we point out in this context an e-mail received from a representative of DCEO, which states that "[w] hile DCEO participated in discussions on this issue, the agency has not formally adopted any of the positions on competitive declaration set forth in the CIWG report."

voluntary grouping of customers for purposes of energy purchases, such as those involving common ownership requirements, may require legislative changes due to the definition of retail customer in the PUA.

3. With regard to the implementation approach to *Question 73*, regarding progress toward uniform tariffs, rules and practices, we object to the statement that "ICC rulemaking and ICC orders approving tariffs are the most likely means of addressing such issues." Legislative changes may or may not be needed for the adoption of uniform tariffs, rules and practices. Alternatively, they may be needed for some but not others. Because no one knows what the scope of these future tariffs, rules and practices might be, it simply is not possible to know whether legislative action will be necessary. This was the rationale for, as well as the substance of, the change we requested in the implementation method for this question. Again, that proposed change is the following: "until the scope of proposed uniform tariffs, rules and practices is known, there can be no definitive determination of whether legislative changes are necessary."

OGC Comment: These comments speak for themselves, and the only further comment by OGC would be that the lack of consensus in this or in other Working Groups should be seen as primarily a function of the nature of the issues themselves, and the difficulty of resolving them in the spring/summer of 2004, rather than as a shortcoming of the process, the conveners, or the working group participants.

The Utility Service Obligations Working Group Implementation Report

I. Identify Questions Addressed by Your working group.

The Utility Service Obligations Working Group (USOWG) was assigned Questions 80-89 from the Illinois Commerce Commission (ICC) Staff's Final Issue List. This series of questions focused on what, if any, retail load-serving obligations the electric utilities will retain in the post-transition period.

The USOWG examined the electric utilities' load-serving obligations in three (3) contexts: identifying the obligations as currently enumerated in the Public Utilities Act (PUA or Act); addressing whether these obligations should be continued once the transition period ends; and considering what amendments, if any, to the PUA would be necessary to change the utilities' obligations. While, in general, the USOWG was able to reach consensus on the first two items noted above, no consensus was reached as to amending the PUA.

The USOWG for the most part, did not focus on implementation questions in the context of its discussions. It made no specific recommendations to changes in Commission rules or the Public Utilities Act or other laws beyond any specific recommendations that may have been mentioned in the text of their final report. The USOWG neither drafted any legislative language nor reached consensus that legislative changes should or should not be required.

Based on a request from the ICC's Implementation Group, the conveners circulated a draft implementation report. Ultimately, multiple revised drafts of this report were circulated to the members of the USOWG via e-mail. While consensus regarding implementation issues was sought, it was not always reached. Accordingly, the following answers regarding the possible implementation methods for these items are not the product of consensus discussions. Rather, these answers represent a post hoc determination of what might be necessary to implement these items. As such, these answers do not necessarily reflect the full agreement of the parties. Moreover, these answers do not imply that other or different or additional implementation approaches should not be considered. Nor are they intended to suggest that the parties are prohibited from suggesting or recommending specific action by the Commission or the legislature on their own.

While the USOWG did not previously discuss or reach consensus on the issue of timing during its summer meetings, a general sense developed that the sooner any revisions or amendments were sought and implemented, the better. Having stated that, however, some Group members oppose any legislative action with respect to these issues during the 2004 General Assembly Veto Session.

Using the PUA's delineations of customers, the USOWG reviewed the utilities' obligations for three (3) different groups of customers: residential and small commercial customers (under 15,000 kWh, as defined by the PUA); commercial and industrial customers whose service has not been declared competitive or abandoned; and commercial and industrial customers whose service has been declared competitive or abandoned. The USOWG analyzed customers solely in these three categories in order to parallel the PUA's demarcations.

DEFINITIONS -- Before delving into the specific questions, the USOWG agreed on definitions of oft-used terms such as "standard offer service", "default service", and "Provider of Last Resort" (POLR) service. The Group defined the term "**default service**" to be interim supply service that is meant to compensate the utility and provide the customer with a short timeframe to review and choose alternative supply options. The group defined "**standard offer service**" to mean bundled service under the current PUA. The group defined "**Provider of Last Resort**" (**POLR**) as follows:

> "While the term "POLR" is used extensively in the electric utility industry, the USOWG reached consensus that the term is inappropriately applied to describe services and products for small commercial and residential customers (as defined in the Act). The USOWG reached this conclusion because the PUA obligates utilities to serve residential and small commercial customers (as defined in the Act), regardless of competitive declaration. In particular, the USOWG notes that it has agreed that utilities should maintain their obligation to provide bundled service for the aforementioned customer classes. In some other jurisdictions, bundled service may be the POLR rate for residential and small commercial customers, although the USOWG reaffirms its objections to labeling bundled service a POLR rate for those customers.

OGC Comment: OGC agrees with this paragraph to the extent that a POLR product is defined to mean a service provided by a load serving entity to a customer that no other supplier will or can serve. However, given that POLR is

not defined in the PUA, it would be beneficial for everyone if legislative action is undertaken to define this term in Section 16-102 of the PUA.

It should be noted that, at the Electricity Policy Committee meeting on October 15,2004, each of the Conveners presented to the Commission their respective reports. In terms of USOWG, the Convener indicated that many of the members of this group were opposed to even referring much less using the term POLR. However, to the extent that the questions below pertain to POLR or to the extent that POLR is an issue that must be dealt with after the transition period ends, recognition needs to be given to the possibility that a definition of the term should be considered. We were informed at the Electric Policy Committee meeting that other states have defined this term. As such, an approach that recommends or recognizes a possible need to define this term in Illinois would not be an original concept.

> "With respect to commercial and industrial customers whose services are not declared competitive or abandoned, the PUA requires utilities to offer bundled service. The USOWG agreed that the utilities should maintain their obligation to provide bundled service for those customer classes. The USOWG could not reach consensus as to whether a POLR product should be offered or whether the mandatory utility bundled rate serves as a POLR product.

OGC Comment: OGC agrees with the first two sentences of this paragraph, i.e., provided they are construed consistently with Section 16-103, and the first phrase of the last sentence of this paragraph. However, if POLR is defined as stated in the previous paragraph, we do not believe that the mandatory bundled rate can be considered a POLR product without a legislative determination that there is a reason to create a type of service called "provider of last resort," a change in Section 16-102 to define the term, and other changes in the body of Article XVI that embody the specific requirements applicable to POLR service.

> "With respect to commercial and industrial customers whose service has been declared competitive or abandoned, a POLR product is a service provided by a load serving entity to serve a customer that no other supplier will serve or can serve. Currently under Illinois law, no entity has this statutory obligation."

> **For each question addressed by your working group identify the issue(s) raised by the question.**

OGC Comment: Although there is no general disagreement with these two paragraphs, i.e., provided they are construed consistently with Section 16-103, to the extent it is desired that the definition of POLR be formalized in Section 16-102 of the PUA, a legislative change would be necessary.

80) What should be the nature of utilities' regulated load serving obligations after 2006? Should there continue to be any obligation for the utility to offer a regulated commodity or "POLR" product? If so, to which customer classes? And, if so, should it be offered on a bundled or unbundled basis?

This question will be addressed in three parts:

A. Residential and Small Commercial Customers (<15,000 kWh)
B. Commercial and Industrial Customers whose service has not been declared competitive or abandoned.
C. Commercial and Industrial Customers whose service has been declared competitive or abandoned.

Part A: For Residential and Small Commercial Customers (15,000 kWh or less per annum):

1. State the consensus reached on the issue, if applicable.

The USOWG reached consensus that the current PUA requires electric utilities to provide a regulated (bundled) product to residential and small commercial customers and that these obligations remain past the expiration of the mandatory transition period. Specifically, the USOWG recognized that the current PUA places certain load-serving obligations on electric utilities to serve all residential and small commercial customers.

OGC Comment: OGC agrees in concept with this paragraph. However, to the extent that the term "regulated product" has any meaning other than is contemplated by the current requirement of the PUA, it would be appropriate for this term to be defined within Section 16-102 of the PUA.

The USOWG reached consensus that in restructuring markets the utility is generally the regulated provider of generation commodity service,

although competitive auctions have been established in some jurisdictions to determine what entity should provide this service.

OGC Comment: A legislative change to Section 16-103 of the PUA would be necessary to the extent that this sentence can be construed as allowing an entity, other than an electric utility, to provide directly the latter's continuing obligations under Section 16-103 of the PUA.

a. Was there consensus on how to implement?

The USOWG reached consensus that the Act should continue to impose a load-serving obligation on electric utilities for the aforementioned customer classes for the foreseeable future. The current PUA places this obligation on the incumbent utility and no utility is seeking to change this obligation. Because the PUA already covers this, no action is needed to implement this consensus item.

OGC Comment: Load-serving obligations should continue with respect to electric utilities consistent with Section 16-103 of the PUA, i.e., which is not necessarily limited to the "foreseeable future."

i. If so, discuss the consensus method.

See 1a above.

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

Because no implementation was required, preferences for implementation were not discussed.

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

Although the USOWG reached consensus on the main issue of question, an additional issue was raised regarding whether or not an alternative supplier could be assigned the obligation to serve. Alternative arrangements could be feasible. For example, the USOWG recognized that it may be possible for the SOS or default service obligations to reside with an entity other than the current incumbent utility, although the Group makes no recommendation as to the feasibility of any particular alternative scenario. While the USOWG did not reach consensus on whether the current PUA permits an entity (other than the current incumbent electric utility) to be statutorily assigned a default service obligation, the USOWG did conclude that such an alternative arrangement is possible if the PUA is amended. However, in the event that this obligation is placed on an entity other than the incumbent utility, that entity should be regulated as a utility is regulated under the PUA.

OGC Comment: A legislative change to Section 16-103 of the PUA would be necessary to the extent that this paragraph is construed as permitting an entity, i.e., other than an incumbent electric utility, to perform directly obligations statutorily assigned to the incumbent electric utility. In addition, a legislative change to Section 3-105 of the PUA would be necessary to the extent it is desired that an entity, i.e., other than a public utility as defined in Section 3-105 of the PUA, is to be regulated as a public utility under the PUA.

a. Discuss possible implementation processes for the alternative positions.

The USOWG did not discuss or agree upon any implementation processes for this alternate position. As an example, some Group members noted that one possible, but not the only, legislative change to implement this alternative is amending Section 16-103 of the Act to redefine the statutory obligations for incumbent electric utilities. In addition, a new Section(s) could be added to provide for an alternative arrangement for the assignment of the default service obligations and responsibilities to an entity other than the current incumbent electric utility.

b. For each of the alternative positions, is any particular implementation method preferable?

Since the USOWG did not reach consensus on this approach, preferences for implementation were not discussed.

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

The USOWG did not reach consensus on this topic. Some Group members indicated that, if an alternative arrangement is sought, and it is determined that legislation is desired or required, then legislation should be sought as soon as possible. Having stated that, however, some Group members oppose any legislative action with respect to these issues during the 2004 General Assembly Veto Session.

OGC Comment: To the extent possible, OGC believes that implementation of a procurement model and the process to develop same should begin as soon as possible so as to provide all interested parties ample time for input and participation.

Part B: For Commercial and Industrial Customers whose service has not been declared competitive or abandoned:

OGC Comment: In Section 16-103 of the PUA, the references to "competitive" and "abandoned" pertain to continuing obligations of an electric utility to provide tariff services that are offered as distinct and identifiable services by that electric utility as of the effective date of the amendatory Act of 1997. In other words, the Section 16-103 obligation to continue to provide tariffed, bundled services to customers continues until the particular service to a particular customer class has been declared competitive under Section 16-113, or abandoned pursuant to Section 8-508, except that the obligation to provide such service to residential and small commercial customers continues even after the service has been declared competitive.

1. State the consensus reached on the issue, if applicable.

The USOWG reached consensus that a regulated product should continue to be offered to commercial and industrial (i.e., non-residential) customers whose service has not been declared competitive or abandoned.

OGC Comment: Assuming that "competitive" and "abandoned" are construed consistently with Section 16-103, a legislative change to Section 16-102 of the PUA may still be necessary if the term "regulated product" has any meaning other than is contemplated by the current requirements of the PUA.

The USOWG reached consensus that the current PUA requires electric utilities to provide a regulated (bundled) product to all non-residential under the conditions described in the Act and that these obligations remain past the expiration of the mandatory transition period. Specifically, the USOWG recognized that the current PUA places certain load-serving obligations on electric utilities to serve all non-residential customers to the extent their service has not been declared competitive or abandoned. With respect to commercial and industrial customers whose services are not declared competitive or abandoned, the PUA requires utilities to offer bundled service. The USOWG agreed that the utilities should maintain their obligation to provide bundled service for these customer classes.

The USOWG reached a consensus that in restructured markets, the utility is generally the regulated provider of generation commodity service, although competitive auctions have been established in some jurisdictions to determine what entity should provide this service.

OGC Comment: If the term "regulated product" is to be used formally, it should be defined in Section 16-102 of the PUA. Consistent with our prior comments made regarding the use of the terms "competitive" and "abandoned," although there is no disagreement with the first paragraph, the second paragraph is somewhat ambiguous. To the extent that the second paragraph is construed to permit entities, other than electric utilities, to provide directly obligations stated in Section 16-103 of the PUA, a legislative change to that section of the PUA would be necessary.

a. Was there consensus on how to implement?

The USOWG did not specifically discuss or agree upon methods of implementation to the extent implementation is required. The USOWG reached consensus that the Act should continue to impose a load-serving obligation on electric utilities for the aforementioned customer classes for the foreseeable future. The PUA places this obligation on the incumbent utility and no utility is seeking to change this obligation. Because the PUA already covers this consensus item, no implementation is required.

However, the ICC ratemaking process and other responsibilities under the Act would take place in conformity with the PUA.

OGC Comment: The load serving obligations of incumbent electric utilities should continue fulfilling these obligations to the above customer classes, in accordance with Section 16-103, until the PUA is changed to limit these obligations just for the "foreseeable future."

Some Group members took the position that,until it is known what type of "regulated product" will be offered to commercial and industrial classes whose service has not been declared competitive, there can be no definitive determination whether a change is necessary to either the PUA or the ICC's administrative rules.

OGC Comment: The term "regulated product" is not defined in the PUA. It would appear that this definition should be added to Section 16-102 of the PUA if the term has any meaning other than is contemplated by the current requirements of the PUA.

i. If so, discuss the consensus method.

Consensus implementation methods were not discussed.

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

Because no implementation methodology was discussed, no preference was established.

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

Although the USOWG reached consensus on the main issue of question 80, an additional issue was raised regarding whether or not an alternative

supplier could be assigned the obligation to serve. The USOWG spent considerable time discussing this issue. Despite these discussions, the Group could not reach consensus as to which entity (the incumbent utility or a qualified third party) should provide the regulated product to these customer classes.

See also Part A, Section 2 above.

OGC Comment: A legislative change to Section 16-103 of the PUA would be necessary to the extent that the above sentences are construed as permitting an entity, i.e., other than an incumbent electric utility, to perform obligations statutorily assigned to an incumbent electric utility.

a. Discuss possible implementation processes for the alternative positions.

See above regarding imposing a service obligation on an entity other than the incumbent utility.

See Part A, Section 2, Subparagraph a, above.

OGC Comment: A legislative change to Section 16-103 of the PUA would be necessary to the extent that the above sentences are construed as permitting an entity, i.e., other than an incumbent electric utility, to perform obligations statutorily assigned to an incumbent electric utility.

b. For each of the alternative positions, is any particular implementation method preferable?

The USOWG did not specifically discuss or agree upon implementation process for the alternative position.

OGC Comment: A legislative change to Section 16-103 of the PUA would be necessary to the extent that the above sentence is construed as permitting an entity, i.e., other than an incumbent electric utility, to perform obligations statutorily assigned to an incumbent electric utility.

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

The USOWG did not discuss or agree upon implementation. If an alternative approach is sought, then legislation should be sought as soon as possible. Having stated that, however, some Group members oppose any legislative action with respect to these issues during the 2004 General Assembly Veto Session.

Part C: For Commercial and Industrial Customers whose service has been declared competitive or abandoned:

OGC Comment: In Section 16-103 of the PUA, the references to "competitive" and "abandoned" pertain to continuing obligations of an electric utility to provide tariff services that are offered as distinct and identifiable services by the electric utility as of the effective date of the amendatory Act of 1997. In other words, the Section 16-103 obligation to continue to provide tariffed, bundled services to customers continues until the particular service to a particular customer class has been declared competitive under Section 16-113, or abandoned pursuant to Section 8-508, except that the obligation to provide such service to residential and small commercial customers continues even after the service has been declared competitive.

1. State the consensus reached on the issue, if applicable.

The USOWG reached consensus that delivery service and RTP rates (as required by the Act) should be offered by utilities to the aforementioned customer class.[1]

The USOWG reached consensus, that in restructured markets, the utility is generally the regulated provider of generation commodity service, although competitive auctions have been established in some jurisdictions to determine what entity should provide this service.

OGC Comment: Although electric utilities may not have generation capabilities, statutory obligations regarding "generation commodity" must, nevertheless, flow

[1] There was no consensus on whether RTP rates could be declared competitive and no consensus on whether other products should or should not be offered to these customers.

through electric utilities. To the extent the above sentence could be construed as meaning that other entities might be able to provide this service directly, a legislative change to Section 16-103 of the PUA would be needed.

a. Was there consensus on how to implement?

Because the PUA already covers this consensus item, implementation is not required.

OGC Comment: Depending on how the above sentence is construed, the PUA does not cover the ability of an entity, i.e., other than an electric utility, to provide directly statutorily mandated obligations pursuant to Section 16-103.

i. If so, discuss the consensus method.

See Part C, Section1,a above.

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

See Part C, Section 1, a above. Implementation methods were not discussed therefore no preference was discussed.

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

The USOWG did not reach consensus on what product(s) (other than delivery service and RTP rates, as required by the Act), if any, should be offered by incumbent utilities to commercial and industrial classes whose service has been declared competitive or abandoned. More specifically, the USOWG did not reach consensus regarding whether electric utilities (or any other entity) were or should be statutorily required to offer any product to competitive or abandoned commercial and industrial customers other than delivery service and RTP rates, as required by the Act.

The USOWG spent considerable time discussing this issue. Despite these discussions, the Group did not reach agreement.

In addition, the USOWG members who believed that a regulated product should be offered to the aforementioned customers could not agree on the type of product (regulated / bundled/ unbundled / market-based) that should be offered.

OGC Comment: The term "regulated product" should be defined in Section 16-102 of the PUA if it has any meaning other than is contemplated by the current requirements of the PUA. In addition, to the extent that such a product is to be offered to commercial and industrial customers where service has been declared competitive or abandoned, Section 16-103 should be amended accordingly.

Some Group members noted that legislation could be required if additional products or services are to be provided to these customers.

a. Discuss possible implementation processes for the alternative positions.

The USOWG did not discuss specific implementation steps for this alternative. However some Group members noted, as shown below, that the PUA could be revised in order to modify the competitive declaration process so that utilities retain load-serving obligations to commercial and industrial customer classes whose service has been declared competitive or abandoned. The USOWG was unable to reach consensus on a preferable implementation method. For example, several USOWG members contended that the competitive declaration process, as enumerated in the PUA, removes load-serving obligations to customer classes if and when the ICC agrees with the load serving entity that enough alternative options exist to deem their service competitive. As such, once the three-year "grandfather" period inherent in the PUA expires, these USOWG members stated that neither utilities nor competitive suppliers have any obligation to serve commercial and industrial customer classes whose service has been declared competitive or abandoned.

OGC Comment: Although there is no general disagreement with this paragraph, the fourth sentence, i.e., referring to "enough alternative options," does not adequately describe what needs to be fulfilled in order to satisfy Section 16-113(a).

Section 16-107 provides for real-time pricing for nonresidential retail customers in a utilities service area. A similar section(s) could be added to provide for additional products.

Section 16-103 would need to be amended, particularly Section (e) which provides that "The Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service." 220 ILCS 5/16-103(e).

Also, other changes or additions to Act may be needed. For example, some or all of Section 16-113 might need to be modified or eliminated. There may be other provisions in the Act that may be eliminated or modified as well. As our previous discussions simply did not ever progress to this level of detail, the USOWG participants do not necessarily agree that these sections are the best to amend if the changes were to be implemented.

OGC Comment: To the extent that Section 16-113 is to be repealed, in addition, other sections of the PUA, e.g., Section 16-103, will also have to be amended.

b. For each of the alternative positions, is any particular implementation method preferable?

The USOWG did not discuss and did not reach consensus on a preferable implementation method.

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

The PUA could be revised in order to modify the competitive declaration process so that utilities retain load-serving obligations to commercial and

industrial customer classes whose service has been declared competitive or abandoned. If the Commission determines that this is the proper policy prescription for Illinois' restructured energy market, the PUA should be amended as soon as possible in order to allow utilities to prudently procure energy and power as well as provide sufficient time to retail electric suppliers (RESs) to revisit their business models. For the sections of the PUA that may have to be revised in order to facilitate an alternative arrangement, please turn to the USOWG's Summary of the Current State of the Illinois Law, which was appended to the USOWG's Final Report. Further, this should not be interpreted to mean that the sections identified in the USOWG's Summary are the only sections that would have to be modified, nor has there been any discussion that these are the only sections that would have to be modified. If legislative changes are proposed, they should be proposed no later than the Spring of 2005. Having stated that, however, some Group members oppose any legislative action with respect to these issues during the 2004 General Assembly Veto Session.

OGC Comment: Depending on how one construes the term "alternative arrangement" in the third sentence of this paragraph, there may be no option but to request a legislative change to Section 16-102 of the PUA. In addition, the PUA should control when analyzing the current law regarding the entities to which it applies. As indicated in this paragraph, the USOWG's Summary of the Current State of the Illinois Law is a summary of certain sections of the PUA and it was not intended to be comprehensive in terms of what is required by the PUA.

81) What if the incumbent does not wish to retain the default service responsibility? Is an alternative arrangement feasible, given the incumbent's distribution monopoly and obligation to operate the system reliably (even if there are supply imbalances)?

1. State the consensus reached on the issue, if applicable.

For purposes of this working group, the USOWG defined "default service" to be interim supply service (ComEd's current Rider ISS is an example of this type of service), but does not include SOS or any other type or kind of similar service. The USOWG agreed that "default service" is meant to compensate the utility and provide the customer with a short timeframe to review and choose alternative supply options. The incumbent utility will

retain the bundled service responsibility specified in the Act unless the law is amended.

OGC Comment: Although there is no general disagreement with the concepts expressed in this paragraph, in order that all will better understand the term "default service," it would be beneficial to have this term defined within Section 16-102 of the PUA.

It is possible for the default service obligations to reside with an entity other than current incumbent utilities, although this group makes no recommendation as to the feasibility of any particular alternative scenario. See Response to question 80, Part A, Section 2.

OGC Comment: Depending on how one construes the term "default service obligations," which is not defined in the PUA, and the term "alternative scenario," legislative changes to Section 16-102 of the PUA would be necessary to include these terms.

a. Was there consensus on how to implement?

The first consensus item in Section 1,a above represents an agreement on a definition used for the purpose of the working group. Therefore it does not requirement implementation. No action is needed to implement the remainder of the consensus.

OGC Comment: It is unclear where "Section 1,a"appears. If it is intended to refer to the definition of "default service obligations," as referenced in 1. in response to question No. 81, then this term should be defined in Section 16-102 of the PUA in order for all to have the same understanding as to what it includes. To that extent, contrary to the last sentence of this paragraph, legislative action would be warranted.

i. If so, discuss the consensus method.

See Section 1,a above.

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

See Section 1,a above. There was no discussion of or agreement on preferred methods or implementation.

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

The Illinois incumbent electric utilities, as represented in the USOWG, indicated that they do not wish to change their default service responsibilities (that are statutorily mandated or optional) at this time. Other USOWG parties indicated that they would like to see the default service responsibility of the utilities clarified and affirmed. The USOWG did not discuss or agree upon how the clarification or affirmation of the utilities' default service responsibility should be accomplished.

OGC Comment: Depending on what is meant by a clarification and affirmation of default service, a legislative change may be necessary by defining this term in Section 16-102 of the PUA.

Should a change in the PUA be sought, the USOWG achieved consensus that an alternative arrangement may be feasible. It is possible for the default service obligations to reside with an entity other than the current incumbent utility. The USOWG makes no recommendation as to the feasibility of any particular alternative scenario.

OGC Comment: To the extent that "alternative arrangement" is interpreted as something in addition to what is already required of incumbent electric utilities in Section 16-103 of the PUA, a legislative change to that section of the PUA may be necessary.

See Section 1 above regarding the imposition of a service obligation on an entity other than the incumbent utility.

OGC Comment: A legislative change to Section 16-103 of the PUA would be necessary in order to impose service obligations directly on an entity other than an incumbent electric utility.

a. Discuss possible implementation processes for the alternative positions.

The USOWG did not specifically discuss or agree upon methods of implementation.

See above regarding imposing a service obligation on an entity other than the incumbent utility.

OGC Comment: A legislative change to Section 16-103 of the PUA would be necessary in order to impose service obligations directly on an entity other than an incumbent electric utility.

b. For each of the alternative positions, is any particular implementation method preferable?

N/A

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

If such a change is deemed necessary, the PUA would have to be revised in order to modify the service obligations to commercial and industrial customer classes whose service has been declared competitive or abandoned. While the timing of such legislative change, should any be deemed necessary, was not discussed, if it is determined that this is the proper policy prescription for Illinois' restructured energy market, the PUA should be amended as soon as possible in order to allow utilities to prudently procure energy and power as well as provide sufficient time to retail electric suppliers (RESs) to revisit their business models. This is not intended to suggest that legislative changes should not be made once the utility's power procurement process has been determined. For some of the sections of the PUA that may have to be revised in order to facilitate an alternative arrangement, please turn to the USOWG's Summary of the Current State of the Illinois Law, which was appended to the USOWG's Final Report. Any legislative change should be sought as soon as possible but no later than Spring of 2005. The USOWG notes that the USOWG's Summary was not written to identify the sections of the Act that would have to be changed under these circumstances and that it may identify some, but not all, of the elements of the Act, that may have to be changed.

OGC Comment: Depending on how one construes the term "alternative arrangement" in the fourth sentence of this paragraph, there may be no option but to request a legislative change by defining this term in Section 16-102 of the PUA. In addition, the PUA should control when analyzing the current law regarding the entities to which it applies. As indicated in this paragraph, the USOWG's Summary of the Current State of the Illinois Law is a summary of certain sections of the PUA and it was not intended to be comprehensive in terms of what is required by the PUA.

82) Is electric service to additional classes of customers likely to be competitive after 2006? Will the provision of electric power and energy continue to be competitive in some territories and not in others?

Please see the first paragraph of the USOWG consensus answer to Item No. 86, and the USOWG consensus answers to Item No. 80. The USOWG could not reach further consensus on this question.

OGC Comment: OGC has no comment to the USOWG consensus answer to Item No. 86. Given that the discussion regarding Item No. 80 covers approximately 12 pages of this group's report, we refer the reader to the USOWG consensus answers to Item No. 80.

83) Regulation of rates for tariffed electric service has traditionally been on a cost-of-service basis. Only the telecommunications markets, with mandated retail competition structures, have been deemed sufficiently competitive for price cap regulation. What criteria will be used to determine the sufficiency of competition?

1. State the consensus reached on the issue, if applicable.

The USOWG was unable to reach consensus on whether or not the criteria discussed in the PUA for determining if a service is competitive are sufficient.

a. Was there consensus on how to implement?

N/A

ii. If so, discuss the consensus method.

N/A

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

N/A

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

The USOWG was also unable to reach consensus as to what criteria should be used to determine the sufficiency of competition assuming that the current criteria are deemed inadequate. Section 16-113(a) provides the standards for the Commission to declare a tariffed service competitive. To the extent that one desires to change the criteria to determine the sufficiency of competition, this Section would need to be amended.

a. Discuss possible implementation processes for the alternative positions.

The standards for the Commission to declare a tariffed service competitive are set forth in the PUA. Some Group members indicated that, to the extent that changes the criteria to determine the sufficiency of competition are desired, the relevant Section(s) of the PUA could be amended.

OGC Comment: To the extent that Section 16-113 is amended, it is quite possible that, depending on the amendment, changes to other sections of the PUA would have to be amended accordingly.

b. For each of the alternative positions, is any particular implementation method preferable?

There was no discussion on preference.

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

Some Group members expressed a preference for any legislative amendments to be filed as soon as possible but no later than Spring of 2005. Having stated that, however, some Group members oppose any legislative action with respect to these issues during the 2004 General Assembly Veto Session. The USOWG, however, did not discuss timing.

84) Should utilities offer services at long-term (a year or longer) fixed prices? Or should at least the power and energy prices vary with the market? If the latter, what is the appropriate time step for adjusting the price?

1. State the consensus reached on the issue, if applicable.

To the extent that utilities have any obligation to offer power and energy service, the USOWG reached consensus that utilities should offer services that strive for price stability for the power and energy component, at least for residential and small commercial and industrial customers who either have no alternative provider option or do not wish to take service from an alternative provider. For these classes of customers, prices should not change frequently and consideration should be given to longer terms between price adjustments (for example: seasonal or annual pricing). Stability will be dependent upon the final procurement methodology and rate design. This response should be construed to be fully consistent with the Rates WG response to Item No. 33A. This answer only contemplates price stability and did not include consideration of other factors such as retail competition or energy efficiency.

OGC Comment: There is no general disagreement with this paragraph provided that it is assumed that stability can be accomplished through rate design and that prices, rates, charges, or classifications are not unjust, unreasonable, discriminatory, or preferential.

a. Was there consensus on how to implement?

The USOWG did not discuss or agree upon any method of implementation.

However, it does not appear that legislative or regulatory changes are necessary to implement. This issue could be considered in a case that sets rates for power and energy under the provisions of the PUA. Further, legislative changes could be made to explicitly mandate stability.

OGC Comment: If rate stability cannot be accomplished through rate design, legislative changes to the PUA or a rulemaking may be necessary. If it is desired to mandate price stability, the PUA would have to be amended accordingly.

i. If so, discuss the consensus method.

N/A

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

The group did not discuss implementation methods and, therefore, no preference for a particular method was agreed upon.

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

Parties could not reach consensus on whether or not such price stability should be provided to large commercial and industrial customers.

a. Discuss possible implementation processes for the alternative positions.

The USOWG did not discuss or agree upon any implementation process. However, no legislative or regulatory change would be required to implement price stability for large commercial and industrial customers. Some Group members contended that a new Section to the Act could be added to mandate that price stability should be provided to large commercial and industrial customers.

OGC Comment: To the extent that price stability can be accomplished through rate design, there is no disagreement with the second sentence of this paragraph. However, the PUA may need to be amended to mandate price stability as suggested in the third sentence of this paragraph.

b. For each of the alternative positions, is any particular implementation method preferable?

N/A

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

The USOWG did not reach consensus on timing.To the extent legislative changes are proposed, they should be sought no later than the Spring of 2005. Having stated that, however, some Group members oppose any legislative action with respect to these issues during the 2004 General Assembly Veto Session.

85) Should different POLR choices be offered to different classes of customers? [Should the POLR options for large customers have the effect of promoting competitive markets?]

1. State the consensus reached on the issue, if applicable.

The acronym “POLR” should not be used in reference to services provided to residential and small commercial customers (as defined in the Act). The USOWG recommends that definitions going forward should be

consistent with the above statement. POLR should not be used as synonymous with SOS for the aforementioned customers.

OGC Comment: Instead of making certain assumptions as to what "POLR" means or includes and given that this term is interpreted in various contexts, Section 16-102 of the PUA should be amended to include a definition of this term.

The USOWG reached consensus that, under the current law, residential and smaller non-residential classes (15,000 kWh per annum or less) and larger non-residential customers whose service has not been declared competitive have different utility service options from large non-residential customers whose service has been declared competitive. It is also the consensus of the Group that, under current law, utility service obligations to non-residential customers whose base rate service has been declared competitive are limited to RTP rates (as provided by the current PUA) and delivery service.

The Group also agreed that there are different service options for customers for whom service has been declared competitive or abandoned as compared to other customers for whom there has been no competitive declaration or abandonment.

Finally, the USOWG agreed that standard offer or POLR service options for commercial and industrial customers should not detract from the promotion of competitive markets but could not reach consensus as to whether such service should promote competition.

Standard offer and POLR service should provide reasonable cost service, ensure that the utility obtains proper cost recovery and compensation for risk assumed and avoid undue administrative complexity.

OGC Comment: It is uncertain as to what is meant by "proper cost recovery and compensation." Perhaps costs should be identified either through an amendment to the PUA or by rulemaking, e.g., the recovery of costs in connection with delivery services as provided in Section 16-108 of the PUA.

Finally the USOWG agreed real time pricing may not be the only appropriate default/standard offer/ POLR service if a customer fails to select an alternative option. A fixed price product (monthly/annual/multiyear) may be appropriate as well.

a. Was there consensus on how to implement?

The USOWG did not discuss or agree upon any implementation process.

i. If so, discuss the consensus method.

See above.

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

See above.

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

The USOWG could not reach consensus as to whether or not the current PUA should be changed to entitle commercial and industrial customers whose services have been declared competitive or abandoned to some type of POLR/Standard Offer Service (whether offered by the utility or a third party).

The USOWG could not reach consensus as to whether SOS/POLR service options for C&I customers should promote competition.

a. Discuss possible implementation processes for the alternative positions.

The USOWG did not discuss or agree upon any implementation process. See above regarding changes to utilities' service obligations and for provision of service by a non-utility. Some Group members noted that one approach would be the addition of a new Section to the Act that to provide SOS/POLR service options for C&I customers that promote competition. The USOWG cautions, however, that care must be taken as to avoid cross-subsidizing procurement costs.

OGC Comment: None other than what has already been provided regarding entities other than electric utilities.

b. For each of the alternative positions, is any particular implementation method preferable?

Given the lack of consensus, as indicated above, the USOWG did not discuss or agree to a preferred implementation method, at least for commercial and industrial customer classes whose service has been declared or abandoned.

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

See above.

86) Should POLR offerings be uniform by customer class across the state? If utilities are in different situations with respect to RTOs and organized markets, should that affect the POLR choice?

1. State the consensus reached on the issue, if applicable.

The USOWG agreed that retail competition has evolved at differing paces for different customer classes in different portions of the State. Utility offerings should reflect different utility situations related to Regional

Transmission Organizations (RTOs) and organized markets to the extent that those situations affect the ability to provide such service.

a. Was there consensus on how to implement?

The USOWG did not discuss or agree upon any implementation process.

i. If so, discuss the consensus method.

N/A

ii. If not, discuss the possible implementation methods.

N/A

b. **Is any particular implementation method preferable?**

N/A

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

The USOWG did not reach consensus on whether POLR offerings should be uniform by customer class across the State.

a. Discuss possible implementation processes for the alternative positions.

The USOWG did not discuss or agree upon any implementation process. The Commission could address the issue of uniformity under its ratemaking authority. The issue of uniformity or delivery service tariffs has been addressed by the Commission in delivery service cases and associated rulemaking proceedings. Some Group members pointed out that, if it is deemed necessary, a new Section to the Act could be added to

provide that POLR offerings should be uniform by customer class across the State.

OGC Comment: To the extent that it is the favored policy of the state to mandate uniform POLR offerings by customer class, OGC recommends this be implemented either through rulemaking or legislative action.

b. For each of the alternative positions, is any particular implementation method preferable?

N/A

II. **For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?**

The USWOG did not discuss or reach consensus on this topic. To the extent the Commission exercises its ratemaking authority, it could do so in the next rate case or the power procurement filing. A general preference was for action sooner but no later than spring of 2005. Having stated that, however, some Group members oppose any legislative action with respect to these issues during the 2004 General Assembly Veto Session.

OGC Comment: This paragraph is somewhat confusing in that it seems to commingle the Commission's ratemaking authority, power procurement filing, and legislative action. In addition, to the extent that POLR offerings are to be considered by the Commission, it would appear that a legislative change to Section 16-102 of the PUA would be appropriate to include a definition of this term in order to standardize what is meant by this term.

87) If utilities offer a fixed price commodity POLR offering, how should the price be set? What role should the ICC have in overseeing the supply arrangements that the utility enters into to provide supply for such a service offering?

1. State the consensus reached on the issue, if applicable.

The USOWG reached consensus that, if utilities offer a fixed price commodity POLR offering, the price should be set based on the cost of

the product being provided, including the full cost to provide power and energy. Processes used to procure power and energy should be prudent, reasonable, fair, transparent and equitable, consistent with ICC authority and state law. The ICC should try to assure that the process produces reliable supply, encourages adequate development of future resources, and does not inhibit the development of wholesale markets.

OGC Comment: If "full cost" is to be allowed with reference to providing power and energy, the PUA would have to be amended accordingly. Similar to that portion of Section 16-108 regarding the recovery of costs for delivery services, a new section would need to be added that identified the costs that can be recovered regarding a fixed price commodity POLR offering, including the full cost to provide power and energy.

a. Was there consensus on how to implement?

The USOWG did not discuss or agree upon any implementation process.

i. If so, discuss the consensus method.

While the USOWG did not discuss or agree upon any implementation process, it appears that this consensus point could be implemented without amending the PUA.

OGC Comment: If "full cost" is to be allowed with reference to providing power and energy, the PUA would have to be amended accordingly. Similar to that portion of Section 16-108 regarding the recovery of costs for delivery services, a new section would need to be added that identified the costs that can be recovered regarding a fixed price commodity POLR offering, including the full cost to provide power and energy. In addition, as already discussed, it might be appropriate to implement a legislative change that adds to Section 16-102 of the PUA a statutory definition of POLR.

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

N/A

2. **If there was not consensus reached on the substantive issue, identify the alternative positions.**

N/A

a. **discuss possible implementation processes for the alternative positions.**

N/A

b. **For each of the alternative positions, is any particular implementation method preferable?**

N/A

II. **For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?**

While the parties did not specifically agree on an implementation method, this item could be implemented in the next utility rate case or in a utility power procurement filing. To the extent such products are offered, the Commission can address them under their normal ratemaking authority or in the utility's power procurement filing, assuming one is made.

OGC Comment: OGC generally agrees with the concept expressed in this paragraph except to the extent that the lack of a statutory definition of POLR in Section 16-102 of the PUA may be an impediment regarding the implementation of this suggestion in the next utility rate case or in a utility power procurement filing. In addition, to the extent that "full cost" is to be allowed with reference to providing power and energy, the PUA would have to be amended accordingly to add a new section that permitted this type of recovery.

88) If utilities offer a variable price commodity POLR offering, how should the price be set? What role should the ICC have in overseeing the supply arrangements that the utility enters into for such a service? In particular, under a variable POLR pricing policy, should the ICC set requirements for

how much the utility can and should rely on the shorter-term market to provide such resources?

1. State the consensus reached on the issue, if applicable.

The USOWG agreed that the price of this product should reflect the cost of delivery service and any other prudent and reasonable costs associated with providing the service.

OGC Comment: OGC generally agrees with this statement provided that prices are fair, transparent, and equitable.

The USOWG also reached consensus that no specific numerical limitation should be placed on reliance of short-term markets for purposes of prudent and reasonable power and energy procurement. The USOWG does not intend to imply by this answer that a variable price service is the only means of providing POLR service however defined.

a. Was there consensus on how to implement?

The USOWG did not discuss or agree upon any implementation process.

i. If so, discuss the consensus method.

While the USOWG did not discuss or agree upon any implementation process, according to some Group members, it appears that this consensus point could be implemented without amending the PUA.

OGC Comment: It is uncertain as to whether this consensus point can be implemented without a legislative change that adds to the PUA a statutory definition of POLR in Section 16-102.

ii. If not, discuss the possible implementation methods.

N/A

b. **Is any particular implementation method preferable**?

N/A

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

N/A

a. discuss possible implementation processes for the alternative positions.

N/A

b. For each of the alternative positions, is any particular implementation method preferable?

N/A

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

The USOWG did not discuss timing

89) What are the circumstances under which PPO must be offered subsequent to the end of the mandatory transition period? How should Sec. 16-110 provisions be implemented by the utilities that are required to offer PPO service after 2006?

1. **State the consensus reached on the issue, if applicable.**

The "Consensus Utility Service Obligations" chart summarizes PPO obligations under current law. This chart is attached to this Final Report as Appendix C.

OGC Comment: The PUA and not the Consensus Utility Service Obligations chart should control in terms of PPO obligations because the chart is not as complete as the PUA. For example, the chart does not take into account certain conditions, e.g., mandatory contract terms and notice, that might be imposed with respect to various services. In addition, the chart assumes no competitive declaration.

a. Was there consensus on how to implement?

Because the PUA already covers this, no action is needed to implement this consensus item.

OGC Comment: The PUA and not the Consensus Utility Service Obligations chart should control in terms of PPO obligations because the chart is not as complete as the PUA. For example, the chart does not take into account certain conditions, e.g., mandatory contract terms and notice, that might be imposed with respect to various services. In addition, the chart assumes no competitive declaration.

i. If so, discuss the consensus method.

N/A

ii. If not, discuss the possible implementation methods.

N/A

b. Is any particular implementation method preferable?

N/A

2. If there was not consensus reached on the substantive issue, identify the alternative positions.

N/A

c. **discuss possible implementation processes for the alternative positions.**

N/A

b. For each of the alternative positions, is any particular implementation method preferable?

N/A

II. For each type of implementation method identified above, discuss the timing associated with the method. If legislation is required to implement an item, when should the legislation be passed?

N/A

IMPLEMENTATION WORKING GROUP PRELIMINARY REPORT

Report of the
ENERGY ASSISTANCE WORK GROUP

The items listed below are the issues addressed by the Energy Assistance Work Group (EAWG) and are discussed in detail in our Final Report. We have not included in this implementation report many items in the EAWG Final Report which highlight the history and positive aspects of the current programs in place, but only list here those issues for which implementation of findings should be considered. None of the issues raised or consensus items reached are directly tied to the end of the transition period and Post 2006 transition. While they are important items and may have some indirect impact in 2007 as rate freezes end, no issues require action in order to transition to Post 2006 electric restructuring.

OGC Comment: Please note that the energy assistance programs are currently administered by the Illinois Department of Public Aid. As discussed below, the charges that are imposed on electrical and gas customers to help fund the programs will automatically be repealed at the end of 2007 unless the legislature reenacts the legislation.

- Final List Question No. 90 – "How should state energy assistance programs be provided for low-income customers who cannot afford to pay just and reasonable rates?"

  - Issues raised by the Question:

    1. **Eligible Participants** – Consensus Statement - The current definition of "at or below 150% of federal poverty level" should remain.
       - This consensus item would result in no change to current Illinois Department of Public Aid (IDPA) rules defining "eligible participant", so no implementation method is required.

OGC Comment: The rules referred to above are contained in Part 100 of Title 47 of the Illinois Administrative Code.

    2. **LIHEAP Eligibility and Priority Period for Applications** –
       a) Consensus Statement - The current limit on eligibility should remain in effect and the practice of allowing households with elderly and disabled members and households without energy service to apply before the general application period should continue.
       - This consensus item would result in no change to current Illinois Department of Public Aid (IDPA) rules defining "eligible participant", so no implementation method is required.

OGC Comment: Please note that Section 6 of the Energy Assistance Act provides that the administering department may not set the income limit on eligibility for participation in the program at a level higher than 150% of the federal nonfarm poverty level. 305 ILCS 20/6(a).

b) Consensus Statement - The IDPA, in consultation with the Policy Advisory Council, should consider an expansion of the priority application period to include households with incomes less than 50% of the federal poverty level and/or low income families with children under the age of 16.

- Implementation of this consensus item would be by IDPA agency consideration and possible administrative action.

OGC Comment: As noted, this would require modification of the priority application rule.

c) Consensus Statement - The IDPA should consider the practicality of using household income in deeming eligibility for the priority application period, as well as the tendency and possibility that expanding eligibility for the priority period may make the priority period less advantageous for the elderly and disabled.

- Implementation of this consensus item would be by IDPA agency consideration and possible administrative action.

3. **Percentage of Income Payment Plan (PIPP)** – Consensus Statement - Further discussions of a PIPP program design and other alternatives should be explored in various policy making venues.
   - There was no substantive discussion by the EAWG regarding how best to implement this consensus item, thus there was no consensus on implementation.
     - Various forums, including General Assembly, Illinois Commerce Commission and IDPA (as well as private efforts) are available for further discussions regarding design of a PIPP program. Several supporters of the PIPP have already begun discussions in some of these forums.
     - There was no consensus regarding a preference for any particular forum or type of forum for further discussions.

OGC Comment: House Bill 2380, which would have added a PIPP to the Energy Assistance Act, was introduced last year in the General Assembly. The proposed legislation was not enacted.

4. **Year-Round Program** – There was no consensus on this item, thus no implementation method is required.

- Proponents of expanding LIHEAP to a Year Round Program will pursue implementation through the various forums listed under item PIPP in Item 3 above.

OGC Comment: Expansion of LIHEAP to a year-round program would require amendment of the applicable administrative rules; this would not require action on the part of the ICC, or legislative amendment of the Public Utilities Act.

5. **Energy Efficiency Education Program** – Energy efficiency holds the promise of reducing the bills of LIHEAP recipients and is one tool that can help low income households maximize the benefits of their LIHEAP grant. CONSENSUS STATEMENT – The IDPA is currently undertaking a pilot program on financial education and energy conservation. This program could have a positive impact on improving LIHEAP and if the evaluation of this and other pilot programs is positive, they should be further developed and expanded.
   - Implementation of this consensus item would be by IDPA agency consideration and possible administrative action, thus no further discussion was held about various implementation methods.

6. **Disconnect/Reconnect Cycle Change** – Consensus Statement - The cycle of utility disconnections in the Spring and Summer followed by reconnections in the Fall is not in the best interest of utilities or their customers.
   - There was no substantive discussion by the EAWG regarding how best to implement this consensus item, thus there was no consensus on implementation.
     - A minority position advocated legislative or regulatory action to codify a previous voluntary agreement on reconnections during the period September 1 through December 31.

OGC Comment: Action in this area would involve Section 8--206 of the Public Utilities Act, which limits the months in which utility services used for space heating may be disconnected because of nonpayment. In addition, Part 280 of the Commission's rules contains provisions concerning service disconnections. 83 Ill. Adm. Code §§ 280.130, 280.135, 280.136.

7. **Municipal Utility/Electric Cooperative participation in LIHEAP** – There was no consensus on this item, thus no implementation method is required.
     - Current law allows munis/coops to choose whether to participate in the collection of the supplemental account charge and enhanced LIHEAP benefits for their members. Some members encouraged programmatic and policy changes that would facilitate voluntary and/or required participation of these

suppliers in the account charge. As noted in our Final Report, neither supporters of this position nor those who support continuation of existing law were able to achieve a level of consensus in the EAWG for their position. Since no consensus item was reached, there was no further discussion of implementation method, however proponents of changes to existing law would need to pursue implementation through modification of statutes in the General Assembly.

8. **Administrative Improvements to LIHEAP Program** – Several administrative changes being pursued by IDPA were recognized as having positive impact both in the short-term and potentially on future program designs. There were no consensus items to pursue and all administrative changes could be implemented with agency action.

OGC Comment: Please note that the agency alluded to in the second sentence is presumably the Illinois Department of Public Aid, which now administers LIHEAP.

9. **Administrative Code Part 280 modifications or legislative action** - There was no consensus on this item, thus no implementation method is required.

- There was one minority position advocating that changes to Part 280 should be made by the Illinois Commerce Commission (ICC) and also that legislative action could clarify ICC's authority to make such changes. There was no consensus on these items and proponents of such positions would need to pursue implementation through the ICC or General Assembly.

OGC Comment: Part 280 provides Commission rules concerning eligibility for service, deposits, payment practices, and discontinuance of service.

- ❖ Final List Question No. 91 – "Is the current surcharge level adequate for energy assistance?"

- Issues raised by the Question:

1. **Energy Assistance Charge** – Consensus Statement - This charge should at least be maintained at current levels.
   - There was no consensus on implementation of this consensus item
     - Some working group members urged continuation of the charge beyond its statutory expiration at the end of 2007 while others only agreed to continuation of the charge up to said expiration date.

- As this charge will "sunset" under current law at the end of 2007, continuation of the charge after that would require action by the General Assembly.

2. **Renewable Energy/Coal Technology Charge** – Consensus Statement - The funding for the Renewable Energy Resources Trust Fund, the Coal Technology Development Assistance Fund and the Energy Efficiency Trust Fund should be at least maintained at current levels.

- There was no consensus regarding implementation of this consensus item
- Some working group members urged continuation of the charge beyond its statutory expiration at the end of 2007 while others only agreed to continuation of the charge up to said expiration date
- As this charge will "sunset" under current law at the end of 2007, continuation of the charge after that would require action by the General Assembly.

OGC Comment: Please note that funding for the programs mentioned above is provided under the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997 (20 ILCS 687/15 through 99). The charges imposed by that statute will terminate in December 2007 unless renewed by the legislature.